

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

B.L., a minor, by and through her father,)
LAWRENCE LEVY, and her mother,)
BETTY LOU LEVY,)

Civ. No. 3:17-cv-1734

Plaintiff,)
)
)

v.)
)
)

MAHANOEY AREA SCHOOL)
DISTRICT;)
)

Defendant.)
_____)

VERIFIED COMPLAINT

INTRODUCTION

This First Amendment case arises out of the Mahanoy Area School District's exclusion of a sophomore high school student from the cheerleading squad as punishment for a single post on Snapchat—created outside of school, on her own time—that school officials believed were “negative,” “disrespectful,” and “demeaning.” Plaintiff seeks injunctive relief and damages.

JURISDICTION AND VENUE

1. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the U.S. Constitution, and is brought under 42 U.S.C.

§ 1983. This Court has jurisdiction over this civil rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

2. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) because the defendant is subject to personal jurisdiction within the Middle District of Pennsylvania and the events that give rise to this action occurred within the Middle District of Pennsylvania.

PARTIES

3. Plaintiff B.L. is a fifteen-year-old student in the Mahanoy Area School District. B.L. lives with her parents in Mahanoy City, Pennsylvania.

4. Plaintiff Lawrence Levy is B.L.'s father. Mr. Levy brings this action on behalf of his minor daughter, B.L.

5. Plaintiff Betty Lou Levy is B.L.'s mother. Ms. Levy brings this action on behalf of her minor daughter, B.L.

6. Defendant Mahanoy Area School District ("the District") is a political subdivision of the Commonwealth of Pennsylvania located in Schuylkill County.

7. The District maintains its administrative offices at 1 Golden Bear Drive, Mahanoy City, PA 17948.

FACTS

8. B.L. is a tenth grade student at the Mahanoy Area High School.

9. B.L. is in the National Honor Society, and has been an honors student since seventh grade.

10. B.L. started cheerleading when she was in fifth grade.

11. B.L. joined the junior varsity cheerleading squad at Mahanoy Area High School in ninth grade.

12. Ms. Nicole Luchetta and Ms. April Gnall are the cheerleading coaches for the District.

13. As cheerleading coaches, Ms. Luchetta and Ms. Gnall report to the Band Director, Assistant Band Director, Athletic Director, Principal, and ultimately to Joie L. Green, the Superintendent of the District.

14. The cheerleading squad is active throughout the year, including the summer.

15. The squad practices several times a week during the summer. During the school year, the squad practices twice a week in addition to cheering at games or matches.

16. The squad cheers for the District football, basketball, and wrestling teams.

Cheerleading Rules

17. The District school board authorized the cheerleading coaches to draft rules and regulations for student cheerleaders and required that the rules be submitted to the District administration, including the high school principal and superintendent, for approval.

18. Upon information and belief, the Mahanoy Area High School Cheerleading Rules (“the Cheerleading Rules”) were approved or ratified by the District administration.

19. B.L. received a copy of the Cheerleading Rules in May 2016 when she joined the junior varsity cheerleading squad.

20. Upon information and belief, those Cheerleading Rules are currently in effect.

21. The Cheerleading Rules state at the top that “All of the information below is at the coaches’ discretions and rules may be subject to change. If there is a situation with extreme circumstances, it will be addressed at that time.”

22. Among other provisions, the Cheerleading Rules state that cheerleaders will be benched if they are failing two or more classes, and will be dismissed from the squad if they are benched three times or are failing two or more classes for three consecutive weeks.

23. The Cheerleading Rules also state that cheerleaders will not be permitted to cheer unless they raise at least \$60 for the team or pay off this “debt” themselves.

24. In addition, the Cheerleading Rules state, “Please have respect for your school, coaches, teachers, other cheerleaders and teams. Remember, you are representing your school when at games, fundraisers, and other events. Good sportsmanship will be enforced, this includes foul language and inappropriate gestures.”

25. The Cheerleading Rules also state, “There will be no toleration of any negative information regarding cheerleading, cheerleaders, or coaches placed on the internet.”

B.L.’s Snapchat Post

26. On or about Saturday, May 28, 2017, B.L. posted a “Snap” to Snapchat—a popular social media platform—featuring a photo of her and a friend holding up their middle fingers with the text “fuck school fuck softball fuck cheer fuck everything” superimposed on the image.

27. B.L. created and posted the Snap using her phone.

28. The Snap did not mention the District, B.L.’s school, B.L.’s cheerleading squad, or any individuals by name, and the photo did not feature any team uniforms or school paraphernalia.

29. The photo was taken at the Cocoa Hut, a local convenience store.

30. The photo was taken on a weekend, when B.L. was not participating in cheerleading or any other school activity.

31. B.L. shared the Snap only with her Snapchat friends. It was not accessible to the general public.

32. Snapchat deletes all Snaps from the platform after 24 hours, so B.L.'s Snap disappeared from Snapchat the next day, which was a Sunday.

33. B.L. did not access or share the Snap at school.

34. B.L. used no school resources to create the Snap.

35. B.L. used no school time to create the Snap.

B.L.'s Dismissal from the Cheerleading Team

36. On Thursday, June 1, 2017, Ms. Luchetta pulled B.L. out of homeroom to inform B.L. that she was dismissed from the cheerleading squad.

37. Ms. Luchetta confronted B.L. with a photo of the Snap containing the phrase "fuck cheer" and told B.L. that the Snap was "disrespectful" to the coaches, the school, and the other cheerleaders, and that the Snap was the reason B.L. was being dismissed from the squad.

38. Neither the cheerleading coaches nor anyone in the District administration ever suggested there was any basis for B.L.'s dismissal from the team other than the content of the offending Snap.

39. The Snap did not create any disruption of school activities.

40. Other than creating the offending Snap, B.L. has never violated any of the Cheerleading Rules.

Repeated Requests for Reinstatement

41. Plaintiff and her parents made repeated requests that the District reconsider B.L.'s punishment, initiating multiple conversations about the issue with the cheerleading coaches, the athletic director, the high school principal, the superintendent, and the school board.

42. After being informed of her suspension from the team, B.L. asked permission to go to the principal's office to telephone her mother. B.L. called her mother and her mother spoke with Ms. Luchetta.

43. On the call with Ms. Levy, Ms. Luchetta reiterated what she had said to B.L., and added that the punishment was ultimately the principal's decision.

44. B.L. asked to speak with Mr. Thomas Smith, the high school principal, and asked him whether there was any way for B.L. to be reinstated to the squad.

45. Mr. Smith told B.L. that he would not overrule the coaches' decision.

46. Mr. Smith also told B.L. that she could receive school discipline for "disrespecting" the school, explaining that he could not tolerate disrespect.

47. Lawrence Levy also spoke with Mr. Smith on June 1, 2017, asking him for a follow-up meeting with the administration to discuss B.L.'s punishment. The Administration rescheduled that meeting several times before ultimately scheduling it for June 14, 2017.

48. On June 9, 2017, Lawrence Levy wrote to Dr. Joie Green (the District superintendent), Mr. Thomas Smith (the high school principal), and Mr. Kieran Cray (the District athletic director) to appeal B.L.'s dismissal from the team.

49. In that letter, Mr. Levy explained that the Snap had been posted on a weekend, off-campus, and not during any school or district sporting event, and that it was accessible only to B.L.'s friends. He also explained that the First Amendment forbids public schools from punishing students because of their out-of-school speech.

50. On June 14, 2017, at 7:30am, Lawrence Levy attended a conference with the District superintendent, athletic director, and the two cheerleading coaches.

51. At that conference, the coaches referred to a copy of the Cheerleading Rules, and stated that the content of the "fuck cheer" Snap violated the Rules.

52. Ms. Luchetta explained that she believed the Snap was "demeaning to me, the school, and the rest of the cheerleaders."

53. On June 29, 2017, Lawrence Levy attended a school board meeting in order to ask the board to reinstate B.L. to the cheerleading squad.

54. At that board meeting, Mr. Levy emphasized that the Snap had been shared with B.L.'s friends on a weekend, not during any school event, and that the Snap did not name any particular people or the school or District.

55. At that board meeting, Mr. Levy also explained that the First Amendment limits public schools' ability to punish students for their off-campus speech, and that schools cannot punish students if the speech has not caused substantial disruption.

56. After the board meeting, Superintendent Green sent a Facebook message to Lawrence Levy to inform him that the school board had decided to stand by the cheer coaches' decision to remove B.L. from the team. Superintendent Green added that B.L. could try out for the cheerleading squad again next year.

57. On September 1, 2017, counsel for B.L. and Lawrence Levy wrote to the Superintendent Green and the District Solicitor to further explain the governing law and request that B.L. be reinstated to the team immediately. The letter asked for a response by the close of business on September 6, 2017.

58. The District Solicitor did not respond to the letter by the appointed time, nor to Plaintiff's counsel's subsequent emails and calls over the following week asking whether the District needed additional time to respond.

Harm to B.L.

59. Cheerleading is the main extracurricular activity to which B.L. has devoted time and energy.

60. Colleges and universities judge applicants not only on their academic records, but also on the depth of their involvement in extracurricular activities.

61. Being removed from the squad impairs B.L.'s opportunities to gain admission to top colleges.

62. Sustained participation in extracurricular activities also has significant benefits for student well-being.

63. Among other benefits, students who participate in extracurricular activities are less likely to abuse alcohol or drugs than students who do not participate in extracurriculars.

64. B.L. misses cheerleading and wants to return to the squad.

65. B.L.'s exclusion from the cheerleading squad constitutes irreparable harm that cannot be adequately remedied by money damages.

CLAIMS

Count I: The District's Punishment of Plaintiff Violates the First Amendment to the U.S. Constitution and 42 U.S.C. § 1983

66. The District's exclusion of B.L. from the cheerleading squad for her out-of-school speech violates the First Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment.

Count II: The Cheerleading Rules, On Their Face, Violate the First Amendment to the U.S. Constitution and 42 U.S.C. § 1983

67. The District's Cheerleading Rules are unconstitutional on their face because they are overbroad and constitute viewpoint discrimination, in violation of the First Amendment to the U.S. Constitution.

Count III: The Cheerleading Rules, On Their Face, Violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983

68. The District's Cheerleading Rules are unconstitutional on their face because they are unduly vague, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

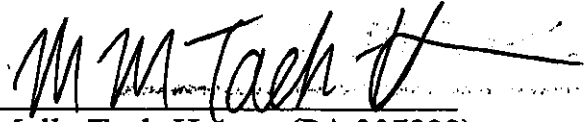
PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that this Court provide the following relief:

- (a) Declare that District's disciplinary action against B.L. for her out-of-school speech violated B.L.'s rights under the First and Fourteenth Amendments to the U.S. Constitution;
- (b) Declare that the District's Cheerleading Rules, on their face, violate the First and Fourteenth Amendments to the U.S. Constitution because they are overbroad and constitute viewpoint discrimination;
- (c) Declare that District's Cheerleading Rules that have been used, and may be used, to punish out-of-school speech are unconstitutionally vague, and thereby violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;
- (d) Enjoin the District from any continuing punishment or sanction against B.L. on account of her constitutionally protected speech, including reinstating B.L. to the cheerleading squad and expunging from B.L.'s school records all references to the incident in question;
- (e) Award Plaintiff damages in an amount to be determined at trial;
- (f) Award Plaintiff costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (g) Grant such other relief as this Court deems just and appropriate.

Dated: September 25, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M Molly Tack-Hooper", with a long horizontal stroke extending to the right.

Molly Tack-Hooper (PA 307828)
Mary Catherine Roper (PA 71107)
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UNION OF PENNSYLVANIA
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Tel: (215) 592-1513 ext. 113
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VERIFICATION

I, B.L., hereby affirm under the penalties of perjury:

1. I am a minor (under eighteen years old).
2. My parents are Lawrence Levy and Betty Lou Levy.
3. I am a Plaintiff in this lawsuit.
4. I have read the factual allegations in the foregoing Verified Complaint.
5. The factual allegations are, to the best of my knowledge and belief, true and correct.

Dated: 9-20-17


B.L.
(B.L. Signature)

VERIFICATION

I, Lawrence Levy, hereby affirm under the penalties of perjury:

1. I am over the age of 18 and competent to testify.
2. I am the parent of B.L., the minor Plaintiff identified in the foregoing Verified Complaint.
3. I have read the factual allegations in the foregoing Verified Complaint.
4. The factual allegations are, to the best of my knowledge and belief, true and correct.

Dated: 9-20-17


(Lawrence Levy Signature)

VERIFICATION

I, Betty Lou Levy, hereby affirm under the penalties of perjury:

1. I am over the age of 18 and competent to testify.
2. I am the parent of B.L., the minor Plaintiff identified in the foregoing Verified Complaint.
3. I have read the factual allegations in the foregoing Verified Complaint.
4. The factual allegations are, to the best of my knowledge and belief, true and correct.

Dated: 9-20-17

Betty Lou Levy
(Betty Lou Levy Signature)

Exhibit B

1. Admitted in part, and denied in part. The District admits that this action is brought under 42 U.S.C. § 1983. The District further admits that this Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1343, as well as 28 U.S.C. §§ 2201 and 2202. The District denies that there are any rights to be vindicated in this action.

2. Admitted.

PARTIES

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

FACTS

8. Admitted.

9. Denied. The District admits only that B.L. achieved “superior honors” as a freshman at Mahanoy Area High School. All other averments of this paragraph are denied.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted in part, and denied in part. The District admits that the cheerleading coaches report to the athletic director, high school principal, and Superintendent Dr. Joie Green. The District denies that the cheerleading coaches report to the band director or assistant band director.

14. Admitted.

15. Admitted in part, and denied in part. The District admits that the cheerleading team practices twice a week in June and July. The District denies that the cheerleading team always practices twice a week during the school year. In reality, the cheerleading team practices once a week in August and during the school year.

16. Admitted.

Cheerleading Rules

17. Admitted in part, and denied in part. The District admits that the cheerleading coaches were authorized to draft and implement rules for student cheerleaders. The District further admits that the rules were submitted to the District administration for approval. All other averments of this paragraph are denied.

18. Admitted.

19. Admitted. By way of further explanation, B.L. received another copy of the Cheerleading Rules in May 2017.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted in part, and denied in part. The District admits that the cheerleading rules state, “Each cheerleader must raise at least \$60 per year (or pay the boosters this fee) to remain on the squad. If the \$60 is not met the cheerleader will not be able to cheer the following year until the debt is paid off.” All other averments of this paragraph are denied.

24. Admitted.

25. Admitted.

B.L.’s Snapchat Post

26. Admitted in part, and denied in part. The District admits that B.L. posted a “Snap” to Snapchat featuring her and a friend holding up their middle fingers, with text superimposed on the image stating, “fuck school fuck softball fuck cheer fuck everything.” The District lacks sufficient information to formulate a belief as to the truth of the averments as to the date when the Snap was posted. Accordingly, that averment is denied.

27. Admitted.

28. Admitted.

29. Admitted.

30. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

31. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

32. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

33. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

34. Admitted.

35. Admitted.

B.L.'s Dismissal from the Cheerleading Team

36. Admitted.

37. Admitted.

38. Admitted.

39. Denied. The averments of this paragraph constitute conclusions of law or argument to which no response is required. To the extent that the averments are deemed factual, they are denied.

40. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

By way of further explanation, at this time the District is not aware of any other violations of the Cheerleading Rules by B.L.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted. By way of further explanation, the District does not agree with Mr. Levy that public schools may not punish students for out-of-school speech.

50. Admitted.

51. Admitted.

52. Admitted.

53. Admitted.

54. Admitted.

55. Admitted in part, and denied in part. The District admits only that Mr. Levy's comments to the school board included his interpretation of the First

Amendment with regard to school students. All other averments of this paragraph are denied.

56. Admitted.

57. Admitted in part, and denied in part. The District admits that on September 1, 2017, counsel for B.L. and Lawrence Levy wrote to Superintendent Green and the District's solicitor about the matter. The District further admits that the letter requested a response by September 6, 2017. All other averments of this paragraph are denied.

58. Admitted.

Harm to B.L.

59. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

60. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

61. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

62. Denied. The averments of this paragraph constitute legal conclusions or argument to which no response is required. To the extent that the averments are deemed factual, they are denied.

63. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

64. Denied. The District lacks sufficient information to formulate a belief as to the truth of the averments of this paragraph. Accordingly, they are denied.

65. Denied. The averments of this paragraph constitute legal conclusions or argument to which no response is required. To the extent that the averments are deemed factual, they are denied.

CLAIMS

Count I

66. Denied. The averments of this paragraph constitute legal conclusions or argument to which no response is required. To the extent that the averments are deemed factual, they are denied.

Count II

67. Denied. The averments of this paragraph constitute legal conclusions or argument to which no response is required. To the extent that the averments are deemed factual, they are denied.

Count III

68. Denied. The averments of this paragraph constitute legal conclusions or argument to which no response is required. To the extent that the averments are deemed factual, they are denied.

WHEREFORE, the Defendants respectfully requests that this Court grant judgment in favor of the Defendant.

AFFIRMATIVE DEFENSES

1. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. There is no *respondeat superior* liability of the Mahanoy Area School District for the actions of its employees.
3. The Plaintiffs have suffered no injury in this matter.
4. No unlawful act or omission caused any injury.
5. The decision to remove B.L. from the cheerleading team – an extracurricular activity – did not violate the First Amendment.
6. B.L.'s profane comments and photograph posted on Snapchat are not protected by the First Amendment.
7. The decision to remove B.L. from the cheerleading team did not affect her ability to advocate her viewpoint.
8. B.L. breached her agreement to comply with the Cheerleading Rules.
9. The conduct of B.L. was repugnant to the images of the School District she agreed to uphold as a voluntary member and representative of the School District's cheerleading squad, wearing the uniform of the School District.

WHEREFORE, the Defendant respectfully requests that this Court dismiss all claims in the Complaint and grant judgment in the District's favor.

DEMAND FOR JURY TRIAL

Defendant hereby respectfully requests makes a demand for a trial by jury.

Respectfully submitted,

Date: November 17, 2017

/s/ David W. Brown

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*Attorneys for Defendant
Mahanoy Area School District*

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2017, I caused the foregoing Defendant's Answer to Complaint, Affirmative Defenses and Jury Demand to be filed using the Court's Electronic Case Filing system, and a Notice of Electronic Case Filing was served upon all counsel in accordance with Fed. R. Civ. P. 5(b) and M.D. Pa. L. R. 5.7.

/s/ David W. Brown

David W. Brown

Exhibit C

B.L.,
Plaintiff
VS.
Mahanoy Area School
District,
Defendant

CASE NO. 3:17-CV-01734

**DIANA GILBRIDE, RMR, FCRR
FEDERAL OFFICIAL COURT REPORTER
P.O. BOX G
SCRANTON, PA 18501-0090**

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FOR DEFENDANT: DIRECT CROSS REDIRECT RECROSS COURT

Coach Nicole Luchetta-Rump

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DEFENDANT:**IDENTIFIED****ADMITTED**

Exhibit No. 1

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Exhibit No. 3

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Exhibit No. 7

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Exhibit No. 5

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Exhibit No. 4

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Exhibit No. 9

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Exhibit No. 10

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Exhibit No. 2

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1 (9:30 a.m., convene.)

2 THE COURT: Okay. We're here on a hearing on a
3 preliminary injunction in the case of B.L. versus Mahanoy Area
4 School District. And the plaintiff -- are you ready to
5 proceed?

6 MS. TACK-HOOPER: Yes, your Honor, a couple
7 housekeeping matters before we would proceed, if that's all
8 right?

9 THE COURT: All right.

10 MS. TACK-HOOPER: We would propose that the parties
11 do very brief opening statements and then closing argument
12 after the presentation of evidence. And that my understanding
13 is that the district has brought several witnesses. We'd
14 request that they -- other than the representative of the
15 district, Superintendent Green, that they be sequestered
16 during --

17 THE COURT: Okay. Any problem with that?

18 MR. LEVIN: Mike Levin for the defense. We have no
19 problem with that, your Honor.

20 THE COURT: Okay. Well then, let's do that, and then
21 let's proceed. I'm fine with that procedure, as far as the
22 opening and closing.

23 MR. LEVIN: Is there a room that the witnesses can
24 sit in during sequestration?

25 THE COURT: I'm sure there is.

1 THE DEPUTY CLERK: There is a conference room in the
2 lobby. Do you want me to --

3 MR. LEVIN: Yes.

4 THE COURT: Yes, we will do that.

5 (Pause.)

6 MS. TACK-HOOPER: Okay. Molly Tack-Hooper for the
7 plaintiff, your Honor. Good morning.

8 THE COURT: All right.

9 MS. TACK-HOOPER: The parties agree here that the
10 plaintiff's likelihood of success on the merits is the main
11 issue in deciding plaintiff's motion for a preliminary
12 injunction. And it's quite clear here that under the Third
13 Circuit decision in J.S. and Layshock the school does not have
14 the power to punish a student for disrespectful or even profane
15 speech that happens entirely outside of school and doesn't
16 cause a substantial material disruption to school activities.

17 In this case the Plaintiff B.L. was punished for a
18 Snap she posted that said, Fuck school, fuck softball, fuck
19 cheer, fuck everything. She posted it on the weekend from a
20 convenience store that's not on school campus. It wasn't
21 during any school activities. And she used no school resources
22 or school time to create it. All of those facts have already
23 been stipulated to by the district. That's really all the
24 Court needs to decide this motion.

25 But today we'll provide some additional context.

1 You'll see the Snap. You'll hear from Plaintiff B.L. You'll
2 hear that she had a rough week when she posted that. She was
3 venting to her friends, which is one of the ways she uses
4 Snapchat. Posting a Snap takes just a few seconds, she'll
5 explain. You open the app on your phone, you take a photo, you
6 add a line of text, and you share it with some or all of your
7 friends.

8 So that Saturday in May B.L. used Snapchat to vent.
9 She posted a Snap that didn't refer to any particular person or
10 team; it didn't include a school logo; she wasn't wearing her
11 cheerleading uniform; it wasn't even during cheerleading
12 season. The sports seasons were over.

13 And she'll explain that Snaps are designed to be
14 fleeting and temporary. They're available for anywhere from
15 one second to 24 hours. This particular Snap was accessible
16 only by her friends on Snapchat, you couldn't go on-line and
17 see it, the general public couldn't download the Snapchat app
18 and see it. And even her friends could only access it for 24
19 hours from that Saturday. So by Monday morning the Snap had
20 already self-deleted from Snapchat. By the time the school
21 week started it was gone.

22 The school punished B. [REDACTED] for that fleeting
23 expression of frustration that she shared with her friends on
24 the weekend entirely outside of the school. Thank you, your
25 Honor.

1 THE COURT: Thank you. Yes.

2 MR. LEVIN: Your Honor, on behalf of the school
3 district the plaintiffs cite cases which are simply
4 inapplicable here. The Layshock case, the J.S. case, and the
5 others including Tinker are all cases where the students are
6 suspended or expelled from school. This is an extracurricular
7 case, where extracurriculars are considered to be privileges,
8 not rights.

9 This student and her parents signed the conduct
10 forms, agreed to comply with the code of conduct, which
11 expressly states that it is applicable during the entire time
12 that the activity, in this case cheerleading, is in session.
13 And the parties stipulated -- it's in paragraph 13 of the
14 stipulations -- as well as the plaintiff's statement, quote,
15 The cheerleading squad is active throughout the year,
16 including the summer.

17 Sportsmanship is one of the important lessons to
18 learn from extracurriculars. And you'll hear that this picture
19 of the plaintiff giving her middle finger to everybody who saw
20 that Snap and the plaintiffs, quote, Fuck cheerleading, end of
21 quote, is not really expressive conduct. I don't know what she
22 intended to mean by that contempt that she showed. And it
23 didn't disappear after 24 hours because people who got her Snap
24 made pictures, brought pictures into the school district, and
25 in fact the pictures are captured on the exhibits that we'll be

1 presenting.

2 When the Court applies the cases that deal with
3 extracurricular activities, the school district was well within
4 its rights in this particular case. Thank you.

5 THE COURT: All right.

6 MS. TACK-HOOPER: Your Honor, to shorten the
7 presentation of evidence the parties have entered into some
8 stipulations of fact and stipulated to two exhibits. The --
9 they have been pre-marked as Defendant's 1 and 3, but we would
10 jointly move them into evidence, your Honor. And I've got
11 copies of the stipulated facts and the exhibits.

12 THE COURT: All right.

13 MS. TACK-HOOPER: Would you like me to pass them up
14 now, your Honor, or hold them until the end?

15 THE COURT: Well, you can do either. Why don't you
16 just hold onto them, as long as there's no --

17 MS. TACK-HOOPER: Certainly.

18 THE COURT: There's no disagreement about it, that's
19 fine. But just be sure to do it at the conclusion of your
20 presentation.

21 MS. TACK-HOOPER: Okay, all right. In that case,
22 your Honor, we would call the plaintiff B [REDACTED] L [REDACTED] to the
23 school [sic]. We've used her initials in the complaint, of
24 course, as is required under the Rules --

25 THE COURT: Right.

1 MS. TACK-HOOPER: -- but we have -- we're not
2 proceeding anonymously. Okay.

3 THE DEPUTY CLERK: Will you raise your right hand.

4 B [REDACTED] L [REDACTED],
5 called as a witness, having been duly sworn or affirmed
6 according to law, testified as follows:

7 THE DEPUTY CLERK: Can you please state your name for
8 the record?

9 THE WITNESS: B [REDACTED] L [REDACTED].

10 THE REPORTER: And can you just spell your first name
11 for me?

12 THE WITNESS: B- [REDACTED].

13 DIRECT EXAMINATION

14 BY MS. TACK-HOOPER:

15 Q. Good morning B [REDACTED].

16 A. Good morning.

17 Q. How old are you?

18 THE COURT: Just move that microphone a little closer
19 to you. That's fine. Thank you.

20 BY MS. TACK-HOOPER:

21 Q. Can you say your name again so we can see if we can hear
22 you.

23 A. B [REDACTED] L [REDACTED].

24 Q. Great. And how old are you B [REDACTED]?

25 A. 15.

1 Q. What grade are you in?

2 A. Tenth.

3 Q. All right. And where do you go to school?

4 A. Mahanoy Area.

5 Q. And what do you do when you're not in school?

6 A. I do my homework or I go outside with my friends.

7 Q. Do you do any sports or activities?

8 A. Cheerleading and softball.

9 Q. When did you start cheerleading?

10 A. In fifth and sixth grade.

11 Q. Okay. Did you do cheerleading in seventh and eighth
12 grade?

13 A. No.

14 Q. All right. What about ninth grade?

15 A. Yes.

16 Q. Okay. What -- so, in ninth grade you were on what
17 cheerleading team?

18 A. JV.

19 Q. JV, junior varsity?

20 A. Yes.

21 Q. Okay, thank you. What teams do you cheer for on the JV
22 squad?

23 A. Basketball, football and wrestling.

24 Q. And those are all men's teams, those teams?

25 A. Yes.

1 Q. How did you get on to the JV squad?

2 A. You had to try out.

3 Q. When did you try out?

4 A. Towards like the end of the school years.

5 Q. So towards the end of eighth grade, before eighth grade?

6 A. Yeah.

7 Q. Okay. And what did you have to do at tryouts?

8 A. A dance and three cheers.

9 Q. Okay. How did you find out that you were -- you had made
10 it onto the JV squad?

11 A. So they called all of us out, and then we had numbers, and
12 they just said our numbers like if we made it on the JV, on the
13 junior varsity.

14 Q. Okay. So they told you right there at tryouts that you
15 were on the team?

16 A. Yes.

17 Q. Okay. And did you have to try out again at the end of
18 ninth grade for tenth grade cheerleading?

19 A. Yes.

20 Q. Okay. And how did -- did that work the same way as the
21 tryouts for ninth grade JV?

22 A. Yes.

23 Q. Okay. And did you make varsity at the end of your ninth
24 grade year?

25 A. No.

1 Q. Okay. Do you remember getting a copy of some cheerleading
2 rules?

3 A. I don't remember.

4 Q. Okay. Can I -- may I approach, your Honor?

5 THE COURT: Yes.

6 BY MS. TACK-HOOPER:

7 Q. Okay. All right. Okay. Let the record reflect I have
8 handed the witness what has been marked as D-3. B[REDACTED], do you
9 see the page that says Mahanoy Area High School Cheerleading
10 Rules at the top?

11 A. Yes.

12 Q. Okay. Do you remember getting these at some point?

13 A. Yeah.

14 Q. Okay. What do you remember about these rules?

15 A. About how like you needed to keep your grades up and you
16 needed to raise a certain amount of money.

17 Q. Okay. Do you remember when you got a copy of these?

18 A. No.

19 Q. Okay. Let's go through a few of the rules. So there's a
20 section at the top that says Attendance. Can you read the
21 first sentence of that first bullet point for me, please.

22 A. All cheerleaders must attend every practice and workshop.

23 Q. Okay. Did you attend every practice and workshop?

24 A. Yes.

25 Q. Okay. The next section says Academic Policy. Is that the

1 one you remember?

2 A. Yeah.

3 Q. All right. Can you read that first bullet point for us,
4 please?

5 A. All cheerleaders must be academically eligible. If you
6 are ineligible you are -- if you are failing two or more
7 classes to participate at games.

8 Q. Have you ever been academically disqualified from doing
9 cheerleading?

10 A. No.

11 Q. How are your grades?

12 A. Good, like honors.

13 Q. All right. And do you plan to go to college?

14 A. Yes.

15 Q. All right. The next section is called Uniforms. Could
16 you read that second bullet point under Uniforms please?

17 A. Uniforms should be machine washed weekly and line dried
18 during regular season.

19 Q. Okay. Have you ever gotten in trouble for having a dirty
20 uniform?

21 A. No.

22 Q. All right. Let's turn the page. There's another section
23 called Sportsmanship and Responsibilities/Fundraising. Did you
24 participate in fundraising as part of the cheerleading team?

25 A. Yes.

1 Q. What did you guys do?

2 A. Krispy Kreme Doughnuts and popcorn sales.

3 Q. Sales, okay. And the final section is called Technology.

4 Can you read that first bullet point under Technology.

5 A. The use of cell phones is prohibited during games and
6 other events.

7 Q. Have you ever gotten in trouble for using your cell phone
8 during a game or other school event?

9 A. No.

10 Q. Have you ever been benched at all from cheerleading?

11 A. No.

12 Q. All right. And other than being punished for your Snap,
13 have you ever gotten in trouble at school?

14 A. No.

15 Q. Okay. In that same document, if you could flip back a
16 couple pages to the exhibit that's been marked Exhibit D-1.

17 And can I approach, your Honor?

18 THE COURT: You may. You don't have to ask me.

19 MS. TACK-HOOPER: Okay.

20 BY MS. TACK-HOOPER:

21 Q. Did you find it? Great. B[REDACTED], is this a photo of a
22 Snapchat that you made?

23 A. Yes.

24 Q. Okay. I want to talk a little bit about what Snapchat is
25 and how it works. So how do you post something on Snapchat?

1 A. Like you go onto the app and click on a button and take a
2 picture or a video. And then you could type like something,
3 anything you want, and then you can post it to your story,
4 which is all of your friends, or send it to like an individual
5 person.

6 Q. Okay. And how long do Snaps last?

7 A. If you send it to an individual person it only lasts ten
8 seconds. But if you put it on your story it will last 24
9 hours.

10 Q. And is there a website you can go to to see someone's
11 Snapchat posts?

12 A. No.

13 Q. So how do you -- you have to -- you mentioned an app. You
14 have to have the app, is that how it works?

15 A. Yes.

16 Q. So what do you use Snapchat for?

17 A. To rant or post funny stuff.

18 Q. Okay. How does it compare to the things you would say to
19 your friends in person?

20 A. How I would talk to them normally.

21 Q. So it's the same way you would talk to them on Snapchat as
22 a person?

23 A. Yeah.

24 Q. Are you on other social media, like facebook or Instagram?

25 A. Yeah.

1 Q. And how does Snapchat compare to those other sites,
2 platforms?

3 A. On my facebook, like the stuff you make is permanent
4 unless you delete it and stuff. And then with Snapchat it only
5 lasts 24 hours.

6 Q. Okay. So let's talk about this particular Snap that you
7 have in front of you. When did you post this?

8 A. It was on a Saturday after tryouts for cheerleading.

9 Q. Do you know like roughly what month that was or season?

10 A. The end of May.

11 Q. All right. So you said it was after tryouts. Were
12 there -- was cheerleading -- were there practices going on at
13 that time?

14 A. No.

15 Q. Okay. Were there games that you were cheering for at that
16 time?

17 A. No.

18 Q. All right. How -- when does cheerleading happen during
19 the school year?

20 A. Practices would start like a week after school ended, like
21 somewhere around there. And then they'd go like throughout the
22 entire school year.

23 Q. Okay. So this was in the period between the end of
24 cheerleading and the start of practices for the next season?

25 A. Yes.

1 Q. All right. And where was this photo taken?

2 A. The Cocoa Hut.

3 Q. What's a the Cocoa Hut?

4 A. It's like a store, a small store.

5 Q. Is it part of school?

6 A. No.

7 Q. All right. Were there any school activities that you were
8 participating in while you took this photo?

9 A. No.

10 Q. All right. And what are you wearing in this photo? First
11 of all, is that you on the left there?

12 A. Yes.

13 Q. And who is the girl on the right?

14 A. My friend D[REDACTED].

15 Q. Does she go to school with you?

16 A. Yeah.

17 Q. Is she a cheerleader?

18 A. No.

19 Q. And what are you wearing in that?

20 A. A gray shirt.

21 Q. Is that your school uniform?

22 A. No.

23 Q. Is your school uniform what you're wearing today?

24 A. Yeah.

25 Q. Okay. Are there any school logos in this photo?

1 A. No.

2 Q. And why did you make this post?

3 A. I was angry about a lot of stuff that day.

4 Q. What were you angry about?

5 A. That I didn't make varsity for cheerleading, and I didn't
6 get the spot I wanted for softball.

7 Q. What spot did you want for softball?

8 A. Right field.

9 Q. And what were you playing?

10 A. The left.

11 Q. Okay. And why were you angry about school?

12 A. Because of finals.

13 Q. Okay. And this language on this Snap, how does that
14 compare to the way you speak when you're at school?

15 A. Different. Because I know I'd get in like big trouble if
16 like a teacher or something hears it.

17 Q. So that's not the kind of language you use at school?

18 A. No.

19 Q. Okay. How did you think your friends would react to the
20 Snap?

21 MR. LEVIN: Objection, irrelevant and speculative.

22 THE COURT: What's the purpose of the question?

23 MS. TACK-HOOPER: Your Honor, the district's brief
24 emphasizes that she was being disrespectful and that this
25 impacted her coaches and her team. So, asking about the intent

1 of the post is --

2 THE COURT: Well I think you can rephrase the
3 question and ask her what she intended to happen rather than
4 what she expected the result to be.

5 MS. TACK-HOOPER: Certainly.

6 BY MS. TACK-HOOPER:

7 Q. What did you intend when you posted this Snapchat?

8 A. What does that mean?

9 Q. It means -- were you trying to send a message to someone
10 with this?

11 A. I was just mad about everything.

12 Q. Okay. Was it directed at a particular person?

13 A. No.

14 Q. All right. And do you know how this photo came to be?

15 A. No.

16 Q. All right. How do you -- so if a Snapchat only lasts ten
17 seconds or 24 hours, is there a way to make them last longer?

18 A. Other than taking a picture of it like this, no.

19 Q. So how do you take a picture of somebody's Snapchat?

20 A. You'd have to get another phone to take a picture of it
21 from someone else's phone.

22 Q. Okay, all right. So you posted this on a Saturday. Was
23 there school the following Monday?

24 A. Yes.

25 Q. And how did your friends react to this post?

1 A. No one said anything to me about it.

2 Q. Not on the weekend?

3 A. No.

4 Q. Not on Monday?

5 A. No.

6 Q. What about on Tuesday? Did anyone say anything to you
7 about the post on Tuesday?

8 A. No.

9 Q. What about Wednesday?

10 A. No.

11 Q. Okay. When was the first time anyone said anything to you
12 about this post?

13 A. Thursday Morning.

14 Q. And what was that conversation?

15 A. Mrs. Luchetta called me to her room at homeroom, and she
16 showed me the picture and said it was disrespectful towards
17 her, the school, and everyone -- like all the students. And
18 then she told me I wasn't allowed to do cheerleading that year.

19 Q. Okay. Did she say what in particular about the Snap was
20 disrespectful?

21 A. No -- oh yeah. She pointed at it.

22 Q. What did she point to?

23 A. The words fuck cheer.

24 Q. Okay. One moment, your Honor.

25 (Pause.)

1 MS. TACK-HOOPER: Nothing else, your Honor.

2 THE COURT: Cross-examine.

3 MR. LEVIN: Yes. I have a packet of exhibits that
4 I'd like to hand up. I have a packet for the Court.

5 THE COURT: All right.

6 CROSS EXAMINATION

7 BY MR. LEVIN:

8 Q. May I call you B [REDACTED]?

9 A. Yes.

10 Q. Okay. Good morning. I'm Mike Levin. I'm an attorney,
11 and I represent the school district. I'm going to ask you some
12 questions. Is that okay with you?

13 A. Okay.

14 Q. If you don't understand any question let me know and I'll
15 be happy to rephrase it, is that all right?

16 A. Yes.

17 Q. Okay. Cheerleading is an extracurricular activity, isn't
18 that true?

19 A. Yes.

20 Q. Cheerleading is totally voluntary, isn't that true?

21 A. Yes.

22 Q. There's no requirement that students participate in
23 cheerleading in order to graduate, is that correct?

24 A. Yes.

25 Q. None of your grades in your academic classes or even gym

1 or phys ed take cheerleading into account, isn't that correct?

2 A. Yes.

3 Q. You're not listed -- cheerleading is not listed on your
4 transcript, isn't that correct?

5 A. I don't know what a transcript is.

6 Q. In order to join the cheerleading squad your parents have
7 to sign an application giving you permission, isn't that
8 correct?

9 A. Yeah.

10 Q. Please take a look at Exhibit D-7. That's behind the 7th
11 tab. Tell me when you have it in front of you.

12 A. I have it.

13 Q. Okay. Do you recognize that as an application form for
14 cheerleading?

15 A. For tryouts, yes.

16 Q. And do you recognize your mother's signature about
17 one-third of the way down?

18 A. Yeah.

19 Q. And in fact, under what has been blacked out, have you
20 ever heard of the word redacted?

21 A. No.

22 Q. Well, redacted means in documents like this when we block
23 something out. I blocked out your name. But do you remember
24 signing this form on April 28, 2017?

25 A. Yeah.

1 Q. Okay. And the third sentence right above where your
2 signature would be says, quote, I promise to abide
3 by the rules and regulations set forth by the advisor and the
4 principal of the Mahanoy Area High School, end of quote. Did I
5 read that correctly?

6 A. Yeah.

7 Q. And the next sentence says, I promise to cooperate and
8 fellow the instructions of the cheerleading coach, period, end
9 of quote. Did I read that correctly?

10 A. Yeah.

11 Q. And you would agree that there's similar language right
12 before your mother's signature, right?

13 A. Yeah.

14 Q. This wasn't the first year that you signed documents
15 acknowledging what the rules are, isn't that correct?

16 A. Yeah.

17 Q. Please take a look at Exhibit D-5, which is behind the
18 fifth tab. Do you remember you and your mother signing that
19 for the 2016/2017 school year?

20 A. I don't remember.

21 Q. Do you remember signing it at the bottom where we have it
22 redacted?

23 A. No.

24 Q. Do you dispute that you and your mother signed this?

25 A. I don't know what that means.

1 Q. Do you disagree that you signed it?

2 A. I don't disagree, but I don't remember it.

3 Q. Okay. Fair enough. And you would agree that about
4 one-fifth of the way down it says Handbook, and do you
5 recognize your mother's --

6 THE COURT: Why are we dealing with this? She said
7 she doesn't remember signing it. She doesn't remember the
8 document. So why are we dealing the document?

9 MR. LEVIN: Okay. I'll move on, your Honor.

10 THE COURT: Is this an agreed to exhibit?

11 MR. LEVIN: It hasn't been put in the stipulation.

12 THE COURT: That's not what I asked. Is this an
13 agreed to exhibit?

14 MS. TACK-HOOPER: Your Honor, we have no objection to
15 the --

16 THE COURT: All right, then fine. Proceed. Sorry.

17 MR. LEVIN: Thank you.

18 BY MR. LEVIN:

19 Q. Do you recognize your mother's signature next to the
20 section that says Handbook?

21 A. Yeah.

22 Q. Do you recog- -- and it's the same signature for all four
23 sections, is that correct?

24 A. Yeah.

25 Q. And do you recognize your mother's signature towards the

1 bottom, right above the redacted area?

2 A. Yeah.

3 Q. And the form refers to a handbook, is that correct?

4 A. I'm not sure.

5 Q. Well, about one fifth of the way down do you see where it
6 says Handbook?

7 A. Yeah.

8 Q. Okay. And all the students in the high school receive the
9 student handbook, right?

10 A. Yes.

11 Q. And you got the student handbook, right?

12 A. Yes.

13 Q. And the student handbook is pretty much the same from year
14 to year, right?

15 A. Yeah.

16 Q. Please take a look at Exhibit D-4, it's behind the fourth
17 tab. Do you recognize that as a page from the student
18 handbook?

19 A. Yeah.

20 Q. And that contains rules about personal conduct, right?

21 A. Yeah.

22 Q. And in paragraph eight there's a star next to that, do you
23 see that?

24 A. Yeah.

25 Q. And do you see where it says, Participation on an athletic

1 team or cheerleading squad in Mahanoy Area School District is a
2 privilege, end of quote, did you see that?

3 A. Yes.

4 Q. Do you also see where it says that, quote, Participants
5 must earn the right to represent Mahanoy schools by conducting
6 themselves in such a way that the image of the Mahanoy School
7 District would not be tarnished in any manner, end of quote.
8 Did I read that correctly?

9 A. Yes.

10 Q. And the next sentence says, quote, Any participant whose
11 conduct is judged to reflect a discredit upon himself/herself,
12 the team or the Mahanoy schools, whether or not such activities
13 takes place during or outside school hours during the school
14 sport season would be subject to disciplinary action as
15 determined by the coach, end of quote. Did I read that
16 correctly?

17 A. Yeah.

18 Q. Now, as a cheerleader the school district provides school
19 district uniforms, isn't that correct?

20 A. Yeah.

21 Q. And those uniforms have school district markings on them,
22 right?

23 A. Yes.

24 Q. And the members of the cheerleading squad are required to
25 wear the uniforms to the games and parades that the

1 cheerleading squad is performing in, right?

2 A. Yes.

3 Q. Now, before you signed Exhibits D-5 or D-7, did you tell
4 the coaches, any teacher or principal that you didn't
5 understand the rules?

6 A. No.

7 Q. Before you snapped a picture of your middle finger and
8 wrote fuck cheer, did you tell anybody that you didn't
9 understand the rules?

10 A. No.

11 Q. Before you snapped the picture of your middle finger and
12 wrote fuck cheer did you ask any of the coaches, any teachers
13 or the principal whether you could post such profanity?

14 A. No.

15 Q. Please take a look at Exhibit D-9. Tell me when you have
16 it?

17 A. I have it.

18 Q. Is that a picture of what the uniforms look like from the
19 front?

20 A. No.

21 Q. Excuse me?

22 A. No.

23 Q. These aren't the uniforms?

24 A. No. These are the seventh and eighth grade ones.

25 Q. Okay, I stand corrected then. Now, getting on varsity

1 cheerleading is a competitive process, right?

2 A. Yeah.

3 Q. There are tryouts where special judges are brought in to
4 evaluate students' performances, right?

5 A. Yes.

6 Q. You tried out on Thursday, May 25, right?

7 A. Yeah.

8 Q. You were told you didn't make varsity, but you made junior
9 varsity, right?

10 A. I was already on junior varsity.

11 Q. Okay. You were told that you didn't make varsity, right?

12 A. Yeah.

13 Q. You were angry about not making varsity, right?

14 A. Yeah.

15 Q. You insisted on seeing the score sheets from the judges,
16 right?

17 A. I don't remember that.

18 Q. You were angry that a freshman made varsity but you did
19 not, right?

20 A. Yeah.

21 Q. You sent a text to Coach Luchetta questioning why a
22 freshman made the varsity squad and you did not, right?

23 A. I don't remember that.

24 Q. When Coach Luchetta told you students did not have to be
25 on JV first in order to be on varsity, you said that was

1 stupid, right?

2 A. I don't know.

3 Q. Please take a look at Exhibit D-10. Do you remember those
4 texts as being a text between you and Coach Luchetta?

5 A. No.

6 Q. You don't remember this at all?

7 A. No.

8 Q. Okay. In addition to Exhibit D-1, which is the Snap where
9 you're giving the middle finger and you're using the F word
10 several times, you also send another Snap, isn't that correct,
11 about this subject?

12 A. I don't remember.

13 Q. Please take a look at what has been marked as Exhibit D-2.
14 Tell me when you have it in front of you.

15 A. I have it.

16 Q. Isn't that another Snap that you sent?

17 A. I don't remember making it.

18 Q. Okay. Is it possible you did and you just don't remember?

19 A. Yeah.

20 Q. And these Snaps which signify your anger were sent on the
21 Memorial Day weekend, right?

22 A. I don't know.

23 Q. How many people had access to these Snaps? You said you
24 sent it to your friends. How many were there?

25 A. About like two-fifty.

1 Q. Two hundred and fifty?

2 A. Yeah.

3 Q. And many of those 250 were students at the Mahanoy Area
4 School District, right?

5 A. Yeah.

6 Q. Some of the people who were among the 250 people were on
7 the cheerleading squad, right?

8 A. Yeah.

9 Q. And after you were told by Coach Luchetta that you were
10 being removed from the cheerleading squad you went to the
11 principal's office, right?

12 A. Yes.

13 Q. And the principal is Mr. Thomas Smith, is that correct?

14 A. Yes.

15 Q. You started crying when you got there, right?

16 A. Yeah.

17 Q. You admitted to Mr. Smith that you posted the Snap, right?

18 A. Yes.

19 Q. And you told him you did it because you were angry, right?

20 A. Yeah.

21 MR. LEVIN: I have nothing further, your Honor. I
22 move for the admission of the exhibits?

23 MS. TACK-HOOPER: Your Honor, we would object to the
24 admission of D-10, the texts that our client doesn't remember.
25 And D-9, the uniforms that have no relevance in this case.

1 MR. LEVIN: We're going to have another witness on
2 D-10. And I agree with respect to -- that there's limited
3 relevance.

4 THE COURT: Okay, they'll all be admitted but for D-9
5 and D-10. Redirect?

6 MS. TACK-HOOPER: Yes, your Honor. One moment, your
7 Honor, please.

8 (Pause.)

9 REDIRECT EXAMINATION

10 BY MS. TACK-HOOPER:

11 Q. Okay. B [REDACTED], I've handed you what has been marked as
12 P-1. Do you recognize that?

13 A. Yes.

14 Q. Is that the handbook that the lawyer for the district
15 referred to earlier?

16 A. Yeah.

17 Q. And can you tell me how many pages are in that handbook?

18 A. A lot.

19 Q. Are they numbered?

20 A. Yeah.

21 Q. Sure. What's the highest page number there?

22 A. 85.

23 Q. Did you read all 85 of those pages?

24 A. No.

25 Q. Do you remember everything that you did read in it?

1 A. No.

2 Q. All right. Was there anything in there that said that
3 students have no right to speak freely with their friends on
4 the weekends?

5 A. No.

6 Q. And those permission slips that the lawyer for the
7 district showed you, did you sign anything saying you agreed to
8 give up your rights to speak freely with your friends on the
9 weekends?

10 A. No.

11 Q. Would you have signed something that said that?

12 A. No.

13 Q. The district lawyer asked if you were angry when you made
14 that -- that Snap. Did you take out your anger at your
15 teammates during -- during tryouts?

16 A. No.

17 Q. Did you use the kind of language in your Snapchat at
18 tryouts because you were angry?

19 A. No.

20 Q. You didn't swear at the coaches?

21 A. No.

22 Q. You didn't swear at your teammates?

23 A. No.

24 Q. When you made this post several days later were you trying
25 to upset people?

1 A. No.

2 Q. Okay. And the district lawyer mentioned that when you
3 spoke with the school officials about being removed from the
4 team you were crying?

5 A. Yeah.

6 Q. Did you apologize for having posted this on Snapchat?

7 A. Yeah, multiple times.

8 Q. And why were you crying B [REDACTED]?

9 A. Because I was upset that I got kicked off.

10 Q. Why were you upset?

11 A. Because I really enjoy cheerleading.

12 MS. TACK-HOOPER: Nothing further, your Honor.

13 MR. LEVIN: I have nothing further.

14 THE COURT: All right. You may step down.

15 MS. TACK-HOOPER: We would move into admission the
16 Exhibit P-1, please, your Honor.

17 MR. LEVIN: I have no objection.

18 THE COURT: Admitted.

19 MS. TACK-HOOPER: And the -- as well as D-1 and 3,
20 I'm not sure whether they were included in what you just moved
21 in, but the stipulated exhibits.

22 MR. LEVIN: They were.

23 THE COURT: They were.

24 MS. TACK-HOOPER: Great, thanks your Honor.

25 Plaintiff rests, your Honor.

1 MR. LEVIN: Our first witness would be Coach
2 Luchetta.

3 THE DEPUTY CLERK: Would you raise your right hand.

4 COACH NICOLE LUCHETTA-RUMP,
5 called as a witness on behalf of the Defendant, having been
6 duly sworn or affirmed according to law, testified as follows:

7 THE DEPUTY CLERK: Please state and spell your name
8 for the record.

9 THE WITNESS: Nicole, N-I-C-O-L-E, Luchetta,
10 L-U-C-H-E-T-T-A dash Rump, R-U-M-P.

11 DIRECT EXAMINATION

12 BY MR. LEVIN:

13 Q. Would you state your full name for the record, please?

14 A. Nicole Luchetta-Rump.

15 Q. By whom are you employed?

16 A. The Mahanoy Area School District.

17 Q. In what capacity or capacities?

18 A. I'm a secondary mathematics teacher and a cheerleading
19 co-advisor.

20 Q. And what do you teach?

21 A. I teach high school mathematics.

22 Q. And how long have you been a public school teacher?

23 A. This is my eighth year.

24 Q. How long have you been a cheerleading coach?

25 A. This is my third year.

1 Q. Did you have any role in writing the cheerleading rules?

2 A. The cheerleading rules were adopted from the previous
3 coaches, but April and I revised them to meet our needs.

4 Q. Did you review the rules with the cheerleaders?

5 A. We reviewed them during the cheerleading workshops during
6 our tryouts. In addition to that, the cheerleaders were
7 required to read and sign a form saying that they will abide by
8 the cheerleading rules before starting cheerleading tryouts.

9 Q. Was B [REDACTED] present when you reviewed the rules?

10 A. Yes.

11 Q. Are there any pedagogical purposes for the rule?

12 A. The main purpose of the rules is to not only teach our
13 students that they have to follow rules, and if they don't
14 follow them there's consequences, but in addition to that we
15 want to teach them team-building skills and skills that they
16 will take with them after they graduate.

17 Q. Did B [REDACTED] try out for varsity cheerleading for the
18 2017/18 school year?

19 A. Yes.

20 Q. Did she make varsity?

21 A. No.

22 Q. How did she react to not making varsity?

23 A. After the tryouts, after the results were given B [REDACTED]
24 seemed visibly upset. She did ask me to see her tryout score.
25 I showed them to her then she handed them back.

1 Q. Did she send you any texts about the subject?

2 A. Yes.

3 Q. Please take a look. On your desk there is a packet of
4 defense exhibits. Please take a look behind Tab 10 at the
5 document called D-10. Do you have it in front of you?

6 A. Yes.

7 Q. Do you recognize that as several texts between you and
8 whom?

9 A. Hum, this is between myself and B.L.

10 Q. That's B[REDACTED]?

11 A. Yes.

12 Q. And some of these texts are in gray and one of the texts
13 is in blue. Do you see that?

14 A. Yes.

15 Q. Who sent the texts that are in gray?

16 A. Hum, B[REDACTED] sent the ones in gray.

17 Q. And the redacted word, is that the word B[REDACTED] in the
18 first one, Hey, it's --

19 A. Yes.

20 Q. Okay. So, B[REDACTED] said, Hey, it's B[REDACTED]. Just wondering,
21 do you have to DK a year of JV before you can make varsity? My
22 mom was wondering. Is that what she asked you?

23 A. Yes.

24 Q. And how did you respond?

25 A. I respond with No.

1 Q. And how did B [REDACTED] respond to your statement?

2 A. She replied with, That's stupid, but okay.

3 Q. And then she also stated the rest of the texts that are in
4 gray, is that correct?

5 A. Correct.

6 Q. And on what date did she send these texts?

7 A. This was on Friday, May 26, one day after the tryouts.

8 Q. Did you subsequently learn about B [REDACTED], quote, fuck
9 cheer, end of quote, Snap and her giving the middle finger to
10 whoever was looking at that Snap?

11 A. Yes.

12 Q. How did you learn about it?

13 A. April Gnaill.

14 Q. And what did April do?

15 A. April had tried to contact the high school principal, but
16 was unable to. So she dropped this Snap off at my classroom.

17 Q. When you say this Snap, please take a look at Exhibit D-1.
18 Is that the Snap you're referring to?

19 A. Yes.

20 Q. Okay. Did you learn about that Snap before April gave a
21 copy of it to you?

22 A. Yes. I had students approach me throughout the school day
23 saying that there were things being posted on line. I did not
24 know the details until April shared them with me.

25 Q. In addition to telling you that there were things posted

1 on-line, did they say anything else about it? Did they
2 describe it in any way?

3 A. They just described it as being something that was
4 inappropriate, that shouldn't be posted on-line.

5 Q. Who made the decision to remove B [REDACTED] from the squad?

6 A. Both April and I made the decision with the support of Tom
7 Smith, the high school principal.

8 Q. And could you explain to the Judge the factors that you
9 took into account?

10 A. The fact that there was profanity in the Snap and it was
11 directed towards cheerleading.

12 Q. Do you know what viewpoint, if any, B [REDACTED] was trying to
13 express when she gave the middle finger to everybody and said,
14 Fuck cheer?

15 A. I did not.

16 Q. Was it the profanity and the profane gesture alone that
17 caused the removal?

18 A. Yes.

19 MR. LEVIN: I have nothing further. Move for the
20 admission D-10.

21 MS. TACK-HOOPER: No objections, your Honor.

22 THE COURT: Admitted. Cross-examine.

23 MS. TACK-HOOPER: Yes, your Honor.

24 CROSS EXAMINATION

25 BY MS. TACK-HOOPER:

1 Q. So that text, D-10, that's not part of why B [REDACTED] was
2 removed from the cheerleading team, right?

3 A. The Snapchat?

4 Q. I'm sorry, no, D-10, the text -- I believe it is 10,
5 right? Yes. The text message she sent you asking did if you
6 had to do a year of JV before you could make varsity?

7 A. No.

8 Q. You stated that some students told you B [REDACTED] had posted
9 something on-line about cheer, right?

10 A. Yes.

11 Q. Okay. You heard B [REDACTED] -- let me rephrase that. I'll
12 represent to you that B [REDACTED] testified that Snaps are not
13 posted on-line, they're within an app that you download on your
14 phone. Are you a Snapchat user?

15 A. I am not.

16 Q. Okay. So you have no personal knowledge about how
17 Snapchat works?

18 A. Hum, it's under- -- my understanding, it's more like a
19 group type message, where anyone that posts it can see it, but
20 the thing is, also people can take screen shots and share that
21 on-line as well.

22 Q. So, the way a Snap would end up on line is if somebody
23 took a photo of the Snap and posted it somewhere on-line, is
24 that what you're saying?

25 A. That's a possibility, yes.

1 Q. Okay. But you have no reason to think that when you put
2 something in your Snapchat story that there is a website
3 someone can go to to see it?

4 A. No, you cannot do that.

5 Q. All right. You mentioned that the profanity and the
6 obscene gesture were enough to remove B [REDACTED] from the
7 cheerleading team, right?

8 A. Correct.

9 Q. If she had said, Cheer is fucking awesome, would that have
10 violated the cheerleading rules in your opinion?

11 A. Yes.

12 Q. Okay. And if she had said something that didn't involve
13 profanity but was still negative about cheerleading, such as, I
14 don't really like cheerleading that much anymore, would that
15 have violated the rules?

16 MR. LEVIN: Objection, speculative.

17 THE COURT: Overruled.

18 THE WITNESS: It would have violated the rules, but
19 the consequences for that would have been different.

20 BY MS. TACK-HOOPER:

21 Q. What would the consequences have been?

22 A. If that were the statement, we would have probably just
23 met with B [REDACTED] and discussed the issue.

24 Q. And where in the rules does it explain what things violate
25 the speech -- violate the rule and what the consequence is

1 going to be?

2 A. We don't have specific consequences. We have that it will
3 be determined by the coaches.

4 Q. Okay. What if she had posted, Cheerleaders are at high
5 risk for eating disorders. Would that have violated the rule
6 about posting negative information regarding cheerleading
7 on-line?

8 A. No.

9 Q. No, that's in your opinion not negative information about
10 cheerleading?

11 A. That would be most likely a statistic that she's posting
12 that she found somewhere.

13 Q. What if she had criticized the selection process for
14 cheerleaders?

15 A. Hum, I would refer her to me to talk to me about it.

16 Q. Would that violate the rule about posting negative
17 information about cheerleading on-line?

18 A. I don't feel that that's a negative comment, no.

19 Q. Okay. What if she had said, Why don't we cheer for the
20 women's sports teams? Fuck that. Would that violate the rule?

21 A. Yes, because there's profanity.

22 Q. Okay. What if she had just said, Why don't we cheer for
23 the women's sports teams? That's crazy?

24 A. Then that would not violate it because there's no
25 profanity.

1 Q. Okay. You talked about some of the value that
2 extracurriculars have. So, they're a privilege, right?

3 A. Correct.

4 Q. And schools don't have to offer extracurriculars?

5 A. Correct.

6 Q. But schools offer them because it helps advance the
7 school's mission of educating kids, right?

8 A. Yes.

9 Q. Okay. Students get a lot out of extracurriculars, is that
10 right?

11 A. Yes.

12 Q. They make kids well-rounded, right?

13 A. Correct.

14 Q. Sports promote healthy students, right?

15 A. Yes.

16 Q. They teach leadership, right?

17 A. Correct.

18 Q. And good sportsmanship, correct?

19 A. Yes.

20 Q. And because of all this, colleges usually favor applicants
21 who have participated in extracurriculars, right?

22 A. Yes.

23 Q. And If you get kicked off of an extracurricular that's
24 going to impact your future, right?

25 A. I'm not sure I agree with that.

1 Q. Potentially it could? That wouldn't be surprising to you,
2 would it?

3 A. I'm not aware of any colleges that are aware of when you
4 get kicked off the sports team.

5 Q. Okay. It would negatively impact a students well-being
6 though most likely, right?

7 A. Temporarily.

8 Q. Okay. And if you -- if a student decided not to
9 participate in an extracurricular because they wanted the right
10 to say whatever they wanted on the weekends with their friends,
11 they wouldn't get the benefit -- all those benefits that you
12 mentioned, right? Like learning leadership and good
13 sportsmanship, right?

14 A. Yes.

15 Q. Okay. If you could look at D-1. Do you have that up
16 there, the cheerleading rules?

17 MR. LEVIN: That's not D-1.

18 MS. TACK-HOOPER: I'm sorry, it's not?

19 THE COURT: No.

20 MS. TACK-HOOPER: Oh, my apologies.

21 MR. LEVIN: D-3.

22 MS. TACK-HOOPER: D-3, I apologize.

23 BY MS. TACK-HOOPER:

24 Q. Do you have D-3, the cheerleading rules?

25 A. I do.

1 Q. Can you look at the section on the second page that says
2 Sportsmanship and Responsibilities/Fundraising?

3 A. Yes.

4 Q. And the last sentence of the first bullet point says, Good
5 sportsmanship will be enforced. This includes foul -- I'm
6 sorry, I'm going to read the whole bullet point. The first
7 bullet point says, Please have respect for your school,
8 coaches, teachers, other cheerleaders and teams. Remember,
9 you're representing your school when at games, fundraisers and
10 other events. Good sportsmanship will be enforced. This
11 includes foul language and inappropriate gestures. Did I read
12 that right?

13 A. Yes.

14 Q. Okay. It only -- it mentions using foul language and
15 inappropriate gestures in a rule about representing your school
16 at games and events, right?

17 A. Correct.

18 Q. It doesn't say anything about not being able to use foul
19 language or inappropriate gestures when you're away from
20 school, does it?

21 A. It does not specifically state that, no.

22 MS. TACK-HOOPER: Okay. Nothing further, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. LEVIN:

25 Q. Just a couple of things. No. 1, is plaintiff permanently

1 removed from cheerleading or may she come back?

2 A. We would like her to be permanently removed.

3 Q. But has she been permanently removed or told that she
4 could --

5 A. She was told that she has to come back.

6 Q. Okay. And that's set to start at the next school year?

7 THE COURT: Wait a minute, I'm confused. We would
8 like her to be permanently removed, but she was told that she
9 has to come back. I don't understand that.

10 MR. LEVIN: Okay, and I'm going to try to clarify.

11 BY MR. LEVIN:

12 Q. Does she have the right to re-apply for cheerleading at
13 the start of next school year?

14 A. Yes. She could retry out for the next school year.

15 Q. Is teaching good sportsmanship in your opinion one of the
16 purposes of extracurriculars?

17 A. Yes.

18 Q. Is this Snap, giving the finger to everybody who looks at
19 the picture and saying fuck cheer the antithesis of good
20 sportsmanship?

21 A. No, it is not.

22 Q. It's the antithesis?

23 A. It is not good sportsmanship.

24 MR. LEVIN: Thank you. Nothing further.

25 MS. TACK-HOOPER: Nothing, your Honor.

1 THE COURT: All right. You may step down.

2 MR. LEVIN: We rest.

3 THE COURT: Any rebuttal?

4 MS. TACK-HOOPER: No rebuttal, your Honor.

5 THE COURT: Okay.

6 MS. TACK-HOOPER: At this time we would like to move
7 in the stipulations. I know the exhibits are already in. I'm
8 not sure if the stipulations themselves are.

9 THE COURT: Which stipulation?

10 MS. TACK-HOOPER: We have stipulations of fact that

11 I --

12 THE COURT: Okay.

13 MS. TACK-HOOPER: -- that I can pass up, your Honor.

14 THE COURT: That's fine.

15 MS. TACK-HOOPER: I might propose a brief break
16 before closing argument, if that's acceptable.

17 THE COURT: Sure. Take -- how long do you want?

18 MS. TACK-HOOPER: Maybe -- would 15 minutes do it?

19 THE COURT: 15 minutes it is.

20 MR. LEVIN: Could we bring our witnesses back since
21 they're not going to testify today?

22 THE COURT: There's not going to be anymore
23 testimony. I have no problem with that.

24 MS. TACK-HOOPER: Thank you, your Honor.

25 (Whereupon, a recess was taken from 10:24 a.m. to

1 10:41 a.m.)

2 THE COURT: Okay, are we all set?

3 MS. TACK-HOOPER: Yes, your Honor.

4 THE COURT: Okay.

5 MS. TACK-HOOPER: So, what have we learned today? We
6 learned that B [REDACTED] was venting because she was angry, and she
7 did it on her own time. She didn't direct her frustration to
8 anyone in particular, and she didn't do it on the field. She
9 didn't lash out at her coaches, she didn't berate her
10 teammates. She waited until it was the weekend and she was
11 hanging out with her friends. And we learned from her coach
12 that the sole reason that she was punished was because she used
13 the F word and gave the middle finger.

14 Her coach testified that she would have been punished
15 if she had said cheerleading was fucking awesome, it was just
16 the profanity and the gesture. And the coach admitted that
17 nothing in the cheerleading rules prohibits the use of
18 profanity or inappropriate gestures off-campus on the weekends.

19 B [REDACTED] wasn't punished because of any disruption
20 caused by the Snap. She was punished for cursing on her own
21 time. The district has the burden to justify its punishment of
22 a student for speech, and there is no Third Circuit case that
23 justifies punishing B [REDACTED] for using the F word on the weekend.

24 This is a very easy case under the Third Circuit
25 decisions in JS and Layshock. Those cases mean that the

1 district here could not reasonably forecast substantial
2 material disruption from this Snap because her speech was
3 private, it was shared with her friends, it was made with her
4 own phone. The photo was taken off campus. And it was only --
5 wasn't accessible by Monday morning. It only made its way into
6 school because other students went out of their way to
7 photograph it and bring it in.

8 Those cases also mean that the Fraser exception to
9 the Tinker doctrine doesn't apply to off-campus speech. It's
10 very clear that using the middle finger or the F word on a
11 weekend off campus is not a basis for punishing B [REDACTED] under
12 Fraser. And of course the facts in both JS and Layshock
13 involved students using profanity outside of school on the
14 internet, and the Third Circuit said the school could not
15 punish them under those circumstances. We also --

16 THE COURT: How do you answer the extracurricular
17 activity argument that's being made by the school district?

18 MS. TACK-HOOPER: Your Honor, it doesn't matter what
19 the punishment is. What matters is that she was punished for
20 her speech. Student speech cases are about how punishment of
21 any kind chills students from exercising their free speech
22 rights. And even Tinker said students have free speech rights
23 on the playing field, that's in the Tinker opinion.

24 And of course there are in the Third Circuit many
25 student speech cases that involve some state action other than

1 expulsion or suspension. KA versus the Pocono Mountain School
2 District didn't involve a student being suspended or expelled,
3 but the Tinker framework was still the correct one to use.
4 Likewise, Layshock, the student was not just suspended but also
5 band from all extracurriculars, he wasn't allowed to
6 participate in graduation, he was placed in an alternative
7 education program, and the court didn't analyze any of these
8 consequences differently from one another.

9 In JS and BH versus the Easton Area School District,
10 those were two more cases where the students were both
11 suspended and also prohibited from attending a school dance,
12 and those punishments were not analyzed any differently in
13 those cases. The proper framework here are the student speech
14 cases that are very familiar in the Third Circuit, Tinker, JS
15 and Layshock.

16 The coach's testimony made it very clear that the
17 part of the cheerleading rules that prohibit placing negative
18 information regarding cheerleading on-line are broad,
19 subjective and standardless.

20 As the coach admitted, it's hard to tell what
21 violates that rule and what doesn't. And it's basically up to
22 the coaches to decide when something has crossed a line and
23 violated that rule and when it hasn't. The First Amendment
24 does not allow schools to punish students pursuant to rules
25 that vague and overbroad.

1 In sum, the plaintiff is clearly likely to succeed on
2 the merits under JS, Layshock and Tinker, and the Court should
3 grant the preliminary injunction. Thank you, your Honor.

4 MR. LEVIN: Your Honor, this is not a Tinker case;
5 it's not a Layshock case; it's not a Blue Mountain case; it's
6 not a Pocono Mountain case, because those cases did not involve
7 solely extracurricular activities. If this was a suspension
8 or --

9 THE COURT: Can you -- can you have a parent or
10 student waive their First Amendment right because they're
11 engaging in an extracurricular activity, in a policy such as
12 you have in this case?

13 MR. LEVIN: I believe that actually you can. And I
14 look to the Acton case, the Supreme Court's case in Acton,
15 where the students were required in order to participate in
16 extracurricular sports to undergo drug and alcohol testing.
17 They were basically told you're giving up your right to decline
18 to be searched in that manner. And the Supreme Court said that
19 that was perfectly permissible under those circumstances.

20 In fact, as part of the analysis in Acton, the
21 Supreme Court said we have acknowledged that for many purposes
22 school authorities act in loco parentis, with the power and
23 indeed the duty to inculcate habits and manners of civility.
24 Thus, while children assuredly do not shed their constitutional
25 rights at the schoolhouse gait, the nature of those rights is

1 what is appropriate for children in school. And -- end of
2 quote.

3 And in this case the rules include -- the rules taken
4 together are what are generally referred to as good citizenship
5 rules. And with respect to good citizenship rules in
6 extracurricular activities, the courts have generally upheld
7 the school district's actions with respect to eliminating or
8 prohibiting students from engaging in the extracurricular
9 sports. This was not an extracurricular matter. I would agree
10 with the plaintiffs, we cannot expel this student for engaging
11 in the conduct in which she engaged.

12 In addition to that, we don't even have to reach the
13 argument as to whether -- which set of cases the school
14 suspension expulsion cases or the pure extracurricular cases
15 rule. I don't even think based upon the evidence presented
16 today that this is even a First Amendment case. Because in a
17 First Amendment you have to engage in expressive conduct, you
18 have to be conveying something.

19 And when the plaintiff was asked a rather simple
20 question, and frankly it was at the suggestion of the Court to
21 rephrase a question to which I objected as to what did she
22 intend, I didn't intend anything. I was just angry. It was as
23 if she was stamping her feet. It was as if she engaged in
24 other conduct that was showing poor sportsmanship. And part of
25 the --

1 THE COURT: I don't understand the sportsmanship
2 argument.

3 MR. LEVIN: Well, the rules --

4 THE COURT: Let me ask you this question. If this
5 young lady had made the same statements to five friends or a
6 hundred friends verbally that afternoon, same result?

7 MR. LEVIN: Well, I could only speculate how that
8 very -- if those friends then told the school district, and the
9 school district believed that that in fact happened, I believe
10 you would have the same result.

11 THE COURT: So, you think that private speech among
12 friends out of school that gets reported to the school could
13 result in someone getting thrown out of an extracurricular
14 activity?

15 MR. LEVIN: Correct.

16 THE COURT: All right.

17 MR. LEVIN: We don't have to go that far in this
18 case.

19 THE COURT: Well, isn't this what happened?

20 MR. LEVIN: No. In this case she sent it to 250 of
21 her friends. I'm not sure if that qualifies as, quote, private
22 speech anymore. I'm not sure that I could recall a time that
23 I've ever spoken to 250 people at the same time.

24 THE COURT: Let's assume it's public speech. I mean,
25 private, public, my point being, it's out of school, it's not

1 in the performance of an athletic endeavor or the
2 extracurricular endeavor itself. And it's something that
3 people do. When they get annoyed they say things -- we've all
4 done that -- that we're maybe not too proud of 15 minutes
5 later.

6 MR. LEVIN: I agree, your Honor.

7 THE COURT: All right.

8 MR. LEVIN: However, there are rules. She signed
9 documents agreeing to abide by them before she was accepted
10 onto the team. It is considered to be a privilege, not a
11 right, and she engaged in conduct where she wasn't engaging in
12 expressive conduct; she was just displaying that she was angry.

13 THE COURT: Why isn't that expressed -- I'm not sure
14 I'm understanding this distinction, that this wasn't expressive
15 conduct. You mean the middle digit is not expressive conduct?

16 MR. LEVIN: According to her testimony --

17 THE COURT: Well, no, no, no, it's according to us.
18 We're here to try to determine what the law is. I have trouble
19 saying it's not -- I'm not going to toy with you. I think it's
20 expressive conduct.

21 MR. LEVIN: Until you say I didn't intend to mean
22 anything. Because the First Amendment case law is real clear,
23 it's the conveying of ideas. What idea is she conveying other
24 than she's angry, so she's lashing out, she's giving everybody
25 the finger, 250 people. There's only about 300 kids in the

1 entire school.

2 THE COURT: She's conveying the idea that she's
3 upset.

4 MR. LEVIN: She could be conveying a lot of other --

5 THE COURT: -- not necessarily the content of the
6 speech, is it?

7 MR. LEVIN: Well, if you're talking about good
8 citizenship rules, it is the content --

9 THE COURT: All right. I don't want to belabor --

10 MR. LEVIN: -- of the speech.

11 THE COURT: I'm sorry. Go ahead.

12 MR. LEVIN: Okay. The rules are clear. She agreed,
13 as I indicated before, to abide by them. Her parents signed
14 the document. D-4 addresses personal conduct. It's same prior
15 paragraph is in P-1. P-1 is this year's version of the
16 handbook. D-4 was the prior year's version. It establishes a
17 number of key facts.

18 First it states and makes clear the participation is
19 a privilege. You have to apply for it. You have to try out
20 for it. You have to meet the conditions. And one of the
21 conditions is you agree that you're not going to be engaging in
22 this kind of conduct.

23 Second. It provides that the students who
24 participate in extracurricular activities are representatives
25 of the school district and they have to earn the right to be

1 representative of the school district. She wants to wear the
2 school district's uniforms. The right to have and wear the
3 uniform is such that the school district should not be
4 tarnished.

5 And the rule makes clear that it applies regardless
6 of whether it's during school, away -- or away from school, as
7 long as it is during the time of the activity and the parties
8 have stipulated that this activity is year long.

9 It reminds school districts children that they're
10 representing the school. It reminds the children that, quote,
11 good sportsmanship will be enforced. This includes foul
12 language and inappropriate gestures, end of quote. No
13 limitation on timelines as to when good sportsmanship will be
14 enforced. And this conduct, by her own admission, was because
15 of the lack of good sportsmanship. She didn't like the fact
16 that she didn't get on the varsity. She was angry and she
17 gives the middle finger to 250 people. She's acting like a
18 poor sport.

19 Wikipedia, which tends to be the font or fount of all
20 knowledge these days says this about sportsmanship. Quote,
21 Sportsmanship is an aspiration or ethos that a sport or
22 activity will be enjoyed for its own sake with proper
23 consideration for fairness, ethics, respect and a sense of
24 fellowship with one's competitor.

25 A sore loser refers to one who does not take defeat

1 well; whereas, a good sport means being a good winner as well
2 as being a good loser. That's what the school district is
3 trying to teach here, good sportsmanship, and there are
4 consequences for it.

5 Two weeks ago I gave a joint presentation at one of
6 the school districts I represent jointly with the union lawyer,
7 and we were speaking about social media. And the union lawyer,
8 being on the private side, I'm on the public side, recognized
9 that there are First Amendment rights, was much tougher in her
10 remarks and advice for her membership about the kind of conduct
11 to engage in and not to engage in away from school.

12 And she showed many examples where adults lose their
13 job, lose their career for conduct that is not too different
14 from what this student displayed. I would suggest to you that
15 districts had an obligation to teach kids about the
16 consequences of their conduct, to teach kids what the real
17 world is like, and to make sure that the kids do not engage in
18 this kind of conduct when they are adults because it's going to
19 have a lot worse effect and consequence than simply losing one
20 year on a cheerleading squad, when she could come back in
21 eleventh or twelfth grade.

22 And another thing the union lawyer said in that
23 presentation is on-line you should make sure that your friends
24 are your friends, because they're the first ones to rat you
25 out. And that's exactly what happened in this case.

1 When you engage in bad behavior, not expressive
2 conduct where she's trying to give any message, but she's being
3 a sore loser, like she was stomping her feet and having a hissy
4 fit, you have consequences, and these consequences are the
5 removal of a privilege for a discrete period of time. Thank
6 you very much.

7 THE COURT: All right. Thank you.

8 MS. TACK-HOOPER: A brief rebuttal your Honor.

9 THE COURT: Go ahead.

10 MS. TACK-HOOPER: So, the district has emphasized
11 that B [REDACTED] received a lot of rules and signed some forms. A
12 couple important points though. The district has admitted that
13 nothing in those rules expressly prohibits students from using
14 profanity on the weekends off-campus. When you waive your
15 constitutional rights that waiver has to be knowing and
16 voluntary.

17 These rules are so vague and so broad that it's
18 impossible for anyone to read any of these rules, especially a
19 tenth grader, and understand that they are giving up their
20 right to speak freely to their friends on the weekend, one or
21 250 of them.

22 Furthermore, the district doesn't seem to be relying
23 on all of these rules. The district didn't say that the
24 problem was that saying Fuck cheer hurt her teammates'
25 feelings, they said the problem was the word fuck. And that if

1 she had said, Cheerleading is fucking awesome, that also would
2 have been a problem. So, all of these rules are a distraction.

3 And if we need to, your Honor, my colleague Mary
4 Catherine can explain in great detail why -- even if B [REDACTED] had
5 knowingly given up her right to speak freely on the weekend --
6 it's unconstitutional for the school district to try to
7 condition participation in cheerleading on waiving your First
8 Amendment rights. So she's here and very knowledgeable about
9 that, if your Honor is interested in hearing a little bit about
10 unconstitutional conditions doctrine.

11 But moving to the student drug testing cases that
12 counsel for the district cited, I would just remind your Honor
13 that the question in Fourth Amendment cases is whether a search
14 is reasonable. That has absolutely nothing to do with the
15 First Amendment standards here. And this idea that the school
16 was acting in loco parentis might play some part in the Fourth
17 Amendment cases -- and again, my colleague Mary Catherine can
18 take you through those if you'd like. But in the First
19 Amendment context, as Justice Alito said in his concurrence in
20 Morse versus Frederick, when schools censor speech they do it
21 as the government, not as parents. Those cases simply have no
22 applicability here.

23 Finally, your Honor, I would just point out that the
24 school's apparent litigation position has extremely
25 broad-reaching consequences. The school wants the power not

1 just to punish cheerleaders for disparaging cheer, but to
2 control what students say, what language they use on their own
3 time off-campus. And it's evident not just in the district's
4 testimony about why they punished her, but also in the breath
5 of the rules they have promulgated to try to control students,
6 particularly athletes and cheerleaders.

7 If the school has the power to kick B [REDACTED] off the
8 cheerleading team for that Snapchat, then they have the power
9 to control what all students say on their own time, which is a
10 very scary prospect. Luckily we have the First Amendment. And
11 in the Third Circuit the student speech doctrine is crystal
12 clear and it does not permit the school to do what they did
13 here.

14 THE COURT: All right. Thank you.

15 MS. TACK-HOOPER: Thank you, your Honor.

16 THE COURT: All right. At the moment we still have
17 the temporary restraining order in effect. It will remain in
18 effect. We have how many more days, I don't know, but you'll
19 hear from me before that time expires on this preliminary
20 injunction question. Okay? Anything further?

21 MS. TACK-HOOPER: Nothing further, your Honor.

22 MR. LEVIN: No, your Honor.

23 THE COURT: All right. Thank you all.

24 MS. TACK-HOOPER: Thank you, your Honor.

25 (10:59 a.m., court adjourned.)

REPORTER'S CERTIFICATE

I, DIANA L. GILBRIDE, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

/s/ Diana L. Gilbride
Diana L. Gilbride, RMR, FCRR
Official Court Reporter

REPORTED BY:

DIANA L. GILBRIDE, RPR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
P.O. Box G
Scranton, PA 18501-0090

(The foregoing certificate of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

B.L., a minor, by and through her father,)	
LAWRENCE LEVY, and her mother,)	
BETTY LOU LEVY,)	Civ. No. 3:17-cv-1734-ARC
)	
Plaintiff,)	
)	
v.)	
)	
MAHANoy AREA SCHOOL)	
DISTRICT;)	
)	
Defendant.)	
_____)	

NOTICE OF TAKING DEPOSITION OF
MAHANoy AREA SCHOOL DISTRICT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)

TO:

Michael I. Levin, Esq.
David W. Brown, Esq.
LEVIN LEGAL GROUP, P.C.
1800 Byberry Road, Suite 1301
Huntingdon Valley, PA 19006

PLEASE TAKE NOTICE that the undersigned, on behalf of Plaintiff, will take the deposition upon oral examination of the Mahanoy Area School District on **Wednesday, June 6, 2018, at 10 a.m.**, at the offices of the Mahanoy Area School District, 1 Golden Bear Drive, Mahanoy City, PA 17948, pursuant to the provisions of Rule 30(b)(6) of the Federal Rules of Civil Procedure before an officer authorized by law to administer oaths. Testimony shall be recorded by stenographic means.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), you are directed to designate one or more knowledgeable officers, directors, managing agents or other persons to testify on your behalf as to each subject matter listed on Schedule A hereto. For each person so designated, set forth in your designation the matters on which that person will testify.

The deposition shall continue from day to day until completed. You are invited to attend and participate.

/s/ Molly Tack-Hooper
Molly Tack-Hooper (PA 307828)
Mary Catherine Roper (PA 71107)
AMERICAN CIVIL LIBERTIES UNION OF
PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102
Tel: (215) 592-1513 ext. 113
Fax: (215) 592-1343
mtack-hooper@aclupa.org

Counsel for Plaintiff

DEFINITIONS

Unless specifically stated otherwise, the following words have the meanings set forth below:

1. “Agent” includes anyone acting on behalf of or in the interest of, whether directly or indirectly, openly or covertly, or with or without compensation.
2. “B.L.” shall refer to the Plaintiff, Brandi Levy.
3. “B.L.’s Punishment” shall refer to the removal of B.L. from the cheerleading squad in June 2017, as described in the Verified Complaint.
4. “Board” shall refer to the Mahanoy Area School District School Board and its members.
5. “Cheerleading Rules” shall refer to the 2016–17 Mahanoy Area High School Cheerleading Rules and any prior or subsequent versions thereof.
6. “Discipline” shall refer to all disciplinary consequences listed in the Discipline Code section of the Mahanoy Area High School Student Handbook, including withdrawal of privileges and temporary or permanent exclusion from athletics or extracurricular activities, as well as any other action taken by the school or district to punish or discipline a student.
7. “District” shall refer to the Mahanoy Area School District.
8. “Negative Information Provision” shall refer to the provision of the Cheerleading Rules that reads, “There will be no toleration of any negative information regarding cheerleading, cheerleaders, or coaches placed on the internet,” as well as any prior or subsequent versions thereof.
9. “Officials” of the District or School shall refer to the administration of the District or the Mahanoy Area High School, and to their administrators and administrative staff, teachers,

support staff, and other school employees or volunteers who work with students, including the District superintendent, high school principal, athletic director, and cheerleading and athletic coaches.

10. “Plaintiff” or “Plaintiffs” shall refer to B.L., her father Lawrence Levy, and her mother Betty Lou Levy, either individually or collectively, and shall be construed in the broadest manner suggested by the context in which the words are used.

11. “Respect Provision” shall refer to the provision of the Cheerleading Rules that reads, “Please have respect for your school, coaches, teachers, other cheerleaders and teams. Remember, you are representing your school when at games, fundraisers, and other events. Good sportsmanship will be enforced, this includes foul language and inappropriate gestures,” as well as any prior or subsequent versions thereof.

12. “School” shall refer to the Mahanoy Area High School.

13. “Snap” shall refer to B.L.’s Snapchat post described in the Verified Complaint, which contains the text “Fuck school fuck softball fuck cheer fuck everything.”

14. “You,” “Your,” and “Defendant” shall refer to the Mahanoy Area School District and any and all agents, officials, and representatives of the District.

15. The following interpretive rules shall apply:

(a) The words “any” and “all” shall be construed as “any and all,” and in the broadest sense to bring within the scope of the deposition topics all responses that might otherwise be construed to be outside of its scope.

(b) The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the deposition topics all responses that might otherwise be construed to be outside of its scope.

(c) The words “between” and “among” shall be construed as “between or among,” and in the broadest sense to bring within the scope of the deposition topics all responses that might otherwise be construed to be outside of its scope. By way of illustration, a topic referring to all Communications between A, B, and C shall include all Communications between A and B, B and C, A and C, or among A, B, and C.

(d) All words used in the singular shall be deemed to include the plural, and vice versa.

(e) The terms “person” and “entity” shall be construed broadly to include any and all entities and organizations, including corporations, sole proprietorships, partnership, joint owners, associations, companies, governmental bodies or agencies, and joint ventures, as well as natural persons.

(f) The terms “about,” “alluding to,” “analyzing,” “arising from,” “commenting on,” “concerning,” “connected with,” “constituting,” “describing,” “discussing,” “evidencing,” “mentioning,” “pertaining to,” “referring to,” “reflecting,” “regarding,” “related to,” “relating co,” “responding to,” “showing,” and “supporting” shall be used interchangeably and construed in the broadest sense to bring within the scope of the deposition topics all responses that might otherwise be construed to be outside of its scope.

(g) The terms “communicate” and “communication” shall refer to any written or verbal statement from one person or entity to another, whether conveyed orally, in writing, electronically, or by other means and whether received or not, including any such statements between officers, directors, employees or agents of the same entity.

INSTRUCTIONS

1. Unless otherwise specified, all topics are to be regarded as concerning past and present incidents, activities, and practices.
2. In responding to this Deposition Notice, you are required to obtain and furnish all information available to you and any of your representatives, employees, agents, servants, or attorneys and to obtain and furnish all information that is in your control or in the possession or under the control of any of your representatives, employees, agents, servants, or attorneys.

SCHEDULE A **30(B)(6) TOPICS**

1. The Cheerleading Rules, including:
 - (a) The drafting and adoption of the Cheerleading Rules. Witness should be able to testify to details including who authorized and drafted the Cheerleading Rules, when they were authorized and drafted, and the nature and extent of any review by District officials and/or the school board, and whether they were approved by District officials and/or the school board.
 - (b) The meaning of the Respect Provision and the Negative Information Provision of the Cheerleading Rules, as well as any other provisions of the Cheerleading Rules that the District contends B.L. violated. Witness should be able to explain how District officials interpret these provisions of the Cheerleading Rules and what kinds of speech the District contends is punishable under these provisions of the Cheerleading Rules.
 - (c) The justification for the Respect Provision and the Negative Information Provision of the Cheerleading Rules, as well as any other provisions of the Cheerleading Rules that the District contends B.L. violated. Witness should be able to discuss any policy considerations or facts known to school officials that justify these provisions of the Cheerleading

Rules, including the date on which any particular consideration or fact became known to the District and how the District became aware of the consideration or fact.

(d) Past application of the Cheerleading Rules to punish students for their in-school or out-of-school speech. Witness should be able to testify to details including the content of the speech that violated the Cheerleading Rules, the specific provision of the Cheerleading Rules violated, the date of the incident, the age and grade of the student involved, the Discipline imposed, and the names of school officials involved in imposing Discipline.

2. How the Respect Provision and the Negative Information Provision of the Cheerleading Rules relate to the “Personal Conduct” rules for athletes and cheerleaders laid out on page 80 of the 2017–18 Mahanoy Area High School Student Handbook for the school, including:

(a) whether students participating in other high school athletics through the District are subject to restrictions on their out-of-school speech similar to the restrictions on speech imposed on cheerleaders, and if not, why not;

(b) whether Hunter Bloss, a football player featured in the Youtube video at issue in *Loy v. Mahanoy Area School District*, was subjected to discipline as a result of his out-of-school speech, and if not, why not;

3. Any disruption to classroom instruction or school activities caused by B.L.’s Snap or any other out-of-school speech by B.L., including her posts on social media. Witness should be able to testify to details including the date of the disruption, nature of the disruption, duration of the disruption, the class or activity disrupted, age and grade of the students involved in the disruption, any action taken in response to the disruption, including any

discipline imposed, and the staff people who observed the disruption or were involved in imposing discipline.

4. Any past incidents of disruption to classroom instruction or school activities caused by a student's out-of-school speech that caused the District to anticipate that B.L.'s Snap would cause disruption. Witness should be able to testify to details including the date of the disruption, nature of the disruption, duration of the disruption, the class or activity disrupted, age and grade of the students involved in the disruption, any action taken in response to the disruption, including any discipline imposed, and the staff people who observed the disruption or were involved in imposing discipline.

5. The justification for B.L.'s Punishment, including:

(a) Which provisions, if any, of the Cheerleading Rules or Mahanoy Area High School Student Handbook were a basis for B.L.'s Punishment;

(b) Whether there were any reasons for B.L.'s Punishment other than B.L.'s Snap;

(c) Whether the District now contends that B.L.'s Punishment was justified by additional facts or applicable School or District rules that were not, at the time, motivating factors in the decision;

(d) Conversations or communications with Plaintiffs about the justification for B.L.'s Punishment; and

(e) Conversations or communications among District officials about the justification for B.L.'s Punishment.

6. School coaches' authority to Discipline students for speech, including pursuant to the Cheerleading Rules, including:

(a) Whether School coaches receive any training or guidance on the limits or extent of their authority to Discipline students for speech;

(b) Whether School coaches are supervised in any manner with respect to the imposition of Discipline for a student's speech, including whether School coaches must notify any School or District Officials either before or after they impose Discipline on students for speech; whether School coaches must document the decision to impose Discipline on students for speech; and whether School coaches may be subject to negative sanctions for exceeding their authority to Discipline students for speech.

7. School and District officials' role in authorizing or ratifying B.L.'s Punishment. Witness should be able to testify to any communications between District officials, school officials, or school board members about B.L.'s Punishment, including the date of the communication, the nature and substance of the communication, the names of people involved in the communication, and any votes taken or decisions made.

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing discovery request upon the persons and in the manner indicated below:

By email:

Michael I. Levin, Esq.
LEVIN LEGAL GROUP, P.C.
mlevin@levinlegalgroup.com

David W. Brown, Esq.
LEVIN LEGAL GROUP, P.C.
dbrown@levinlegalgroup.com

Dated: May 14, 2018

/s/ Molly Tack-Hooper
Molly Tack-Hooper (PA307828)
AMERICAN CIVIL LIBERTIES
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P.O. Box 60173
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Exhibit E



Molly Tack-Hooper <mtack-hooper@aclupa.org>

Re: MASD 30b6

1 message

David Brown <dbrown@levinlegalgroup.com>

Tue, Oct 9, 2018 at 1:13 PM

To: Molly Tack-Hooper <mtack-hooper@aclupa.org>

Cc: Michael Levin <mlevin@levinlegalgroup.com>, "Helfer III, Arleigh P." <ahelfer@schnader.com>

Molly,

As I stated, the district will be designating the two cheerleading coaches - Ms. Gmail and Ms. Luchetta-Rump - and Superintendent Joie Green. The specific topics to which they will testify are as follows:

Topic 1 - Luchetta and Gnall

Topic 2 - Green

Topic 3 - Luchetta

Topic 4 - Green

Topic 5 - Luchetta (w/ Green on 5d/5e)

Topic 6 - Green

Topic 7 - Green

I will send you a paper copy of the designation by email later today. Feel free to call me with any questions.

Dave

Sent from my iPhone

On Oct 8, 2018, at 10:04 PM, Molly Tack-Hooper <mtack-hooper@aclupa.org> wrote:

Mimecast Secure Message – Highly Sensitive Content

Maintain the message's security by replying via the Mimecast Secure Messaging web app, or selecting the 'Send Secure' option in a Mimecast Application.

Just following up on my question about order of the witnesses, and to see whether you'd decided who is covering which topics. I'd be happy to just have that info in an email.

Thanks much. Looking forward to seeing you (both?) on Wednesday morning.

Best,
Molly

Molly Tack-Hooper | Staff Attorney

Preferred gender pronouns: she, her

ACLU of Pennsylvania

P.O. Box 60173, Philadelphia, PA 19102

215.592.1513 x113 | mtack-hooper@aclupa.org

aclupa.org  



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On Sun, Oct 7, 2018 at 12:42 PM Molly Tack-Hooper <mtack-hooper@aclupa.org> wrote:

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

B.L., A MINOR, BY AND THROUGH :
HER FATHER, LAWRENCE LEVY, : CIVIL NO. 3:17-CV-1734-ARC
AND HER MOTHER, BETTY LOU :
LEVY, :

PLAINTIFFS :

V :

MAHANoy AREA SCHOOL DISTRICT, :

DEFENDANT :

DEPOSITION OF: NICOLE LUCHETTA-RUMP

TAKEN BY: PLAINTIFFS

BEFORE: MARIA N. O'DONNELL, RPR
NOTARY PUBLIC

DATE: OCTOBER 10, 2018, 8:51 A.M.

PLACE: MAHANoy AREA SCHOOL DISTRICT
ONE GOLDEN BEAR DRIVE
MAHANoy CITY, PENNSYLVANIA

1
2 APPEARANCES:

3 AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
4 BY: MOLLY TACK-HOOPER, ESQUIRE
5 P.O. BOX 60173
6 PHILADELPHIA, PA 19102
215-592-1513
MTACK-HOOPER@ACLUPA.ORG
FOR - PLAINTIFFS

7 LEVIN LEGAL GROUP
8 BY: DAVID W. BURNS, ESQUIRE
1800 BYBERRY ROAD
9 HUNTINGDON VALLEY, PA 19006
215-938-6378
10 DBROWN@LEVINLEGALGROUP.COM
FOR - DEFENDANT

11 ALSO PRESENT:
12 LAWRENCE LEVY
BETTY LOIU LEVY
13 DR. JOIE GREEN
APRIL GNALL
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WITNESSES

NAME	EXAMINATION
NICOLE LUCHETTA-RUMP	
BY: MS. TACK-HOOPER	4, 72, 73
BY: MR. BROWN	71, 73

EXHIBITS

DEPOSITION EXHIBIT NO.	PRODUCED AND MARKED
2. NOTICE OF DEPOSITION	5
3. 201-6-2017 CHEERLEADING RULES DOCUMENT	17
4. 2009-2010 CHEERLEADING RULES DOCUMENT	18
5. OBJECTIONS/RESPONSES TO PLAINTIFFS'	
INTERROGATORIES	50
6. RULES DOCUMENT	54
7. DOCUMENT	56
8. DOCUMENT	65
9. DOCUMENT DATED 9/27/17	69

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are hereby waived; and that all objections except as to the form of the question are reserved to the time of trial.

NICOLE LUCHETTA-RUMP, called as a witness, being duly sworn, testified as follows:

EXAMINATION

BY MS. TACK-HOOPER:

Q Good morning.

A Good morning.

Q My name is Molly Tack-Hooper. I represent the plaintiffs in this case.

Have you ever testified in a deposition before?

A No.

Q I will ask you questions. If you don't understand my question, please tell me or ask for clarification. If you answer, I will assume that you have understood the question. Is that fair?

A Yes.

Q We can take a break, so if you need one, just let me know.

A Okay.

Q Today I am taking your deposition in part as a

1 designee of the Mahanoy Area School District. Do you
2 understand what that means?

3 A No.

4 MS. TACK-HOOPER: Okay. I am -- let's mark this
5 P-2.

6 (Notice of deposition produced and marked Deposition
7 Exhibit Number P2.)

8 (Discussion held off the record.)

9 BY MS. TACK-HOOPER:

10 Q Okay. I am handing you a document that's been
11 marked as P-2. It is a 30 (b)(6) notice. It contains a list
12 of topics starting on page A6.

13 You have been designated to speak for the school
14 district on a number of these topics including topic one, the
15 cheerleading rules, which contains a number of component
16 parts.

17 Have you seen this document before?

18 A Yes.

19 Q Okay. And are you the person who is most
20 knowledgeable along with Coach Gnall about the cheerleading
21 rules?

22 A Yes.

23 Q And you have also been designated to testify for the
24 district on topic three on page A7 and A8?

25 A Yes.

1 Q Are you the person who's most knowledgeable about
2 that topic?

3 A Yes.

4 Q You have also been designated to testify for the
5 district about topic five starting on page A8. And Coach
6 Gnall has also been designated on subparts D and E of five.
7 Are you the --

8 MR. BROWN: Actually I believe that was the
9 Superintendent Green for 5D and E.

10 MS. TACK-HOOPER: Oh, okay. I am not sure about
11 that. Is that --

12 MR. BROWN: Yes.

13 MS. TACK-HOOPER: Green. Okay.

14 MR. BROWN: Right.

15 BY MS. TACK-HOOPER:

16 Q Okay. All right. Are you able to speak for the
17 district on topic five?

18 A Yes.

19 Q All right. If I ask you about anything that you
20 think someone else is more knowledgeable about, will you tell
21 me that?

22 A Yes.

23 Q Okay. Is there any reason why you cannot give
24 truthful testimony today?

25 A No.

1 Q What did you do to prepare for this deposition
2 today?

3 A We met yesterday just -- and viewed these documents
4 that were sent to us.

5 Q Okay. By these documents, you are gesturing toward
6 the 30 (b) (6) notice, is that correct?

7 A Yes. Yes.

8 Q Did you look at any other documents?

9 A Not that I am -- I mean there was this one. I think
10 there was one other notice. I don't know the title of it, but
11 there is one other notice that we had.

12 Q Okay.

13 A It looked similar to that.

14 Q Okay. A legal document of some sort?

15 A Yes. Yes.

16 Q Okay. What is your title?

17 A I am a high school math teacher as well as a
18 cheerleading advisor.

19 Q What does cheerleading advisor mean?

20 A It is basically a cheerleading coach.

21 Q Okay.

22 A Last year, I was a co-advisor. This year I am a
23 head cheerleading advisor since April Gnall resigned last
24 year.

25 Q Are you paid extra for your work as cheerleading

1 advisor?

2 A Yes.

3 Q Okay. Who do you report to in your capacity as
4 cheerleading advisor?

5 A I report to the high school principal, the athletic
6 director, and the superintendent as well.

7 Q How many years have you held some kind of
8 cheerleading title at the district?

9 A This is my fourth year.

10 Q And how long have you worked for the district as a
11 teacher?

12 A This is my ninth year.

13 Q Did you coach cheerleading before coming to the
14 district?

15 A I did not.

16 Q I am going to ask you just generally about
17 cheerleading. How does someone get on to the cheerleading
18 team?

19 A They have to try out.

20 Q And what do the tryouts involve?

21 A They include a process where they have a two-day
22 workshop. They come in. They learn a cheer, a side line,
23 jumps and a dance. And then they come and perform those.
24 They are scored on a score sheet. We have outside judges come
25 in to score them, then we take the highest scores for varsity,

1 then the lower scores for JV.

2 Q And what are those judges looking for?

3 A Motions, voice. I have to think what else is on the
4 score sheet. I think appearance was on there as well.

5 Q What do you mean by appearance?

6 A They have to come in without any jewelry on, no nail
7 polish, hair in a pony tail, stuff like that.

8 Q Why is that?

9 A The hair up in a pony tail, that -- when they're
10 actually performing, that could be a safety issue; when we're
11 building, jewelry can also be a safety issue. Then the nail
12 polish is just everyone looks as uniform as one group.

13 Q Is there any requirement to be on the team other
14 than the tryouts? Do you have to fill out a written
15 application, for example, anything like that?

16 A To initially try out, they have to sign -- it's a --
17 basically a waiver. They have to put their emergency contact
18 information on there as well. Then they sign a waiver saying
19 they agree to the rules.

20 The rules are given to them at -- the day of the
21 tryouts. In addition to that, they also have to get a
22 physical which is actually after tryouts. But if they don't
23 have the physical, they cannot participate, so that is
24 something that PIAA requires.

25 Q Okay. You are not screening potential cheerleaders

1 for like character and fitness, for example?

2 A No. No. That's after the fact. Well, the
3 physicals are any way.

4 Q Physicals are. Okay.

5 And cheerleaders don't have to have recommendations
6 to get on the team?

7 A Not for our school, no.

8 Q Do you consider their grades at all?

9 A They must be eligible to try out, which means in
10 order to participate in the sports, they have to be passing
11 all of their classes except for one. If they're passing --
12 failing two or more classes, they cannot try out.

13 Q When you select cheerleaders for the team, are the
14 you evaluating their potential leadership abilities in any
15 way?

16 A Not at the tryout, no. That would come more into if
17 we were doing captains or something like that. But at the
18 tryout, I don't honestly -- I don't know them well enough to
19 do such a thing.

20 Q Okay. You don't ask teachers about them or have
21 them fill out -- write an essay, anything like that to try to
22 evaluate that?

23 A No.

24 MS. TACK-HOOPER: Okay. This is D7.

25 BY MS. TACK-HOOPER:

1 Q I am handing you a document that's previously been
2 marked D7. It says application for cheerleading tryouts at
3 the top. Are you --

4 A Yes.

5 Q Are you familiar with this document?

6 A Yes.

7 Q The second sentence says I understand that he/she
8 must abide by the rules and regulations set forth by the
9 advisor and the principal of Mahanoy Area High School and be
10 present for all practices and games. Did I read that right?

11 A Yes.

12 Q Does rules and regulations in that sentence refer to
13 the cheerleading rules?

14 A Yes.

15 Q The third sentence says I have read the rules and
16 regulations and understand that the violation of any of these
17 rules may lead to temporary or permanent suspension from the
18 squad. Does that also refer to the cheerleading rules?

19 A Yes. The first sentence includes the cheerleading
20 as well as the Mahanoy Area School rules, which are outlined
21 in the handbook. And then the second one is just solely on
22 the cheerleading rules.

23 Q Okay. The form also asks students to list their
24 extracurricular activities?

25 A Yes.

1 Q Why?

2 A This is for me to better set practice schedules
3 because I work around all of these other activities, so I just
4 like to get an idea as what activities I need to schedule my
5 practice around.

6 Q Okay. Can cheerleaders participate in other sports?

7 A We allow them to participate in anything. But other
8 sports have regulations on whether they cannot do cheerleading
9 in addition to; for example, band front, they do not allow
10 them to do cheerleading and band front at the same time. They
11 said there is too much of a conflict. So I do not have any,
12 but others sports activities do have some.

13 Q Okay. Now, you testified at the preliminary
14 injunction hearing in this case, correct?

15 A Yes.

16 Q And you testified that the rules, the cheerleading
17 rules are explained to students at tryouts. Is that correct?

18 A Yes.

19 Q Did that include telling the cheerleaders at tryouts
20 that they could be punished for their out-of-school speech?

21 A We went through the entire rule sheet as it is. I
22 did not stray from what is on the school's -- on the rule
23 sheet. So it doesn't specifically address out-of-school
24 speech, it just says in general anything negative posted about
25 cheerleaders and school teachers, employees and so on would be

1 punished.

2 Q Can you describe the differences between the JV and
3 varsity team to me?

4 A The varsity team and the JV team -- the varsity
5 cheers at more events. Varsity will cheer at varsity
6 football, varsity basketball. JV only cheers at JV football
7 games, part of the varsity football games and only JV home
8 basketball games.

9 Q Okay. Do either of those teams compete?

10 A No.

11 Q Do the JV and varsity teams practice together or
12 separately?

13 A Over the summer, we practice together. Then when
14 basketball time comes around, we often stray apart. So for
15 the most part, we practice together all summer. Then during
16 the winter times, there are times we practice together. There
17 is times we practice apart based on what we're teaching.

18 Q What did you -- do you consider to be the
19 cheerleading season?

20 A Although there is no sport seasons over the summer,
21 we practice all summer. Then we continue to practice until
22 the end of basketball season. So we are working from the
23 beginning of summer, from tryouts, which are usually in May,
24 all of the way through until I would say the end of March of
25 the following year.

1 Q How often do you practice?

2 A Over the summer, we practice twice a week. When we
3 go back to school, I have worked around the girls schedules.
4 That could be once a week, twice a week. It really depends on
5 their schedules.

6 Q My understanding is that there was only one practice
7 in September of 2018. Is that correct?

8 A That is correct.

9 Q Why was that?

10 A Because we were practicing Tuesdays and Thursdays
11 because I like to work around -- I like to keep them
12 consistent, because some of the girls have to give their work
13 schedule and stuff like that. So I told them Tuesdays and
14 Thursdays will be our days to practice. Then we have several
15 girls that are on the volleyball team, so their coach will not
16 let them practice on game days. And he also doesn't like them
17 to really -- I mean if they have practice, we will practice
18 the same day after their practice. But on game days, he
19 doesn't want cheerleading practice to occur. I work around
20 their game. If they don't have a game, then I have practice
21 right after volleyball practice.

22 Q Do the cheerleading squads cheer for any women
23 sports teams?

24 A No, not currently.

25 Q Who makes the decision about which teams to cheer

1 for?

2 A I am not sure whoever came up with -- who they cheer
3 for, who we don't. We have just continued on the tradition
4 from prior years as to what they actually cheer for --

5 Q Do you currently have any male cheerleaders?

6 A We almost did. We had one over the summer, but he
7 decided not to do it.

8 Q Okay. Do you have any who tried out and didn't make
9 the team?

10 A No.

11 Q I noticed that in some of the previous rules it
12 referred to cheerleaders as girls. So I was trying to figure
13 out if it was an exclusively girls sport or not.

14 A No.

15 Q Not exclusively girls?

16 A No.

17 Q Just currently girls?

18 A Currently it is, yes.

19 Q Okay.

20 A I think it was two years ago, we did have -- we had
21 a male on for two years.

22 Q Okay. I'd like to talk about the cheerleading rules
23 which have previously been marked as Exhibit D3.

24 Okay. I believe that you testified at the
25 preliminary injunction hearing that you had updated the rules

1 to suit your needs?

2 A Uh-huh.

3 Q Is that a yes?

4 A Yes.

5 Q Okay. When was that, your update?

6 A The very first year April and I coached, from my
7 recollection, we did not change anything except for changing
8 our names, adding our names and our phone numbers into the
9 rule sheet. So we just wanted to see how that year went, see
10 what we felt needed to be changed. We did change some minor
11 things. I know for sure one of them was like uniforms have to
12 be washed weekly and line dried. So there were just a couple
13 things that we felt we needed to add to that. I think -- let
14 me see what else. I believe that I added about the
15 conversation that they had to fill out a transportation form
16 because that is a school policy as well, but that just wasn't
17 in the rule sheet.

18 Q Okay.

19 A And then we did, which I can explain later as to
20 why, but we did change the technology policy slightly because
21 it did state that any negative information posted on the
22 internet would be automatic dismissal from the squad. But
23 instead our high school principal suggested that we put this
24 on top of the rule sheet. It says all of the information
25 below is at the coaches' discretion, and rules may be subject

1 to change. So that is one change that was made.

2 MS. TACK-HOOPER: Can we mark this as P-3?

3 (Cheerleading rules 2016-2017 document produced and
4 marked Deposition Exhibit Number P3.)

5 BY MS. TACK-HOOPER:

6 Q I have handed you what's just been marked as P-3.

7 Is this the 2016-2017 cheerleading rules?

8 A Uh-huh.

9 Q The one -- last one that you were looking at was
10 2017-2018?

11 A Yes.

12 Q It appears to me the technology portion of the
13 2016-2017 rules is what you just described, is that right?

14 A I believe these are the same technology section,
15 yes.

16 Q So you were describing a change that you made in
17 2016 from the prior set of rules, is that right?

18 A It was after my first year of coaching, it was
19 changed.

20 Q What was your first year of coaching?

21 A Oh, dear.

22 Q If you can't recall, it's okay.

23 A It would have been four years ago, whatever school
24 year that ends up being.

25 MR. BROWN: So this is your fourth year. You are

1 saying it was 2015-16?

2 THE WITNESS: Yes.

3 BY MS. TACK-HOOPER:

4 Q Okay. So I have cheerleading rules from 2009, 2010,
5 then the next one I have is 2016, 2017?

6 A Yes. I don't have a copy of those.

7 Q That's fine. But your recollection is that the
8 2016-2017, and 2017 and 2018 are basically the same as the
9 first two years that you were coaching as well?

10 A Yes. They're pretty much the same except for that
11 technology section which we just changed by adding that
12 because there is many different situations to be addressed in
13 that section.

14 Q Okay. Just for the record, when you said we changed
15 by adding that, you were gesturing to the language that
16 says --

17 A The italicized section up here that says all of the
18 information below is at the coaches' discretion, and rules may
19 be subject to change. If there is a situation with extreme
20 circumstances, it will be addressed at that time.

21 Q Okay.

22 A And that was as per recommendation of Tom Smith.

23 MS. TACK-HOOPER: Okay. Let's mark this P-4.

24 (Cheerleading rules 2009-2010 document produced and
25 marked Deposition Exhibit Number P4.)

1 BY MS. TACK-HOOPER:

2 Q Okay. I am handing you what has been marked as P4,
3 the 2009, 2010 cheerleading rules?

4 A Yes.

5 Q So by the time that you were coaching cheerleading,
6 the rules already looked a little bit different from this, is
7 that correct?

8 A That's correct.

9 Q Okay. Have you seen this set of rules before?

10 A I have not.

11 Q Okay. Did anyone review the rules after you edited
12 them?

13 A That would have been between seasons that they were
14 edited. So my first year, they were the set of rules that we
15 don't see here. And then I edited them for the next tryouts,
16 then this set of rules was reviewed.

17 Q By whom was it reviewed?

18 A Oh, did anyone look at them?

19 Q Yes.

20 A I had Tom Smith, which was our high school principal
21 at the time, I just had him read through them and ask him if
22 he had any suggestions. So he didn't have to approve them. I
23 just asked him for suggestions on how to make them better.

24 Q Okay. No one had to approve your changes?

25 A No.

1 Q Do you know if they ever went to the board in any
2 fashion?

3 A No, we don't do that here.

4 Q Okay. Let's go back to D3, the 2017, 2018
5 cheerleading rules. Okay? I'd like to look at the first
6 bullet under sportsmanship and responsibilities/fundraising.
7 It says please have respect for your school, coaches,
8 teachers, other cheerleaders and teams. Remember you are
9 representing your school when at games, fundraisers and other
10 events. Good sportsmanship will be enforced. This includes
11 foul language and inappropriate gestures. Did I read that
12 correctly?

13 A Yes.

14 Q I am going to refer to this as the respect
15 provision; okay? Is that fair?

16 A Yes. Yes.

17 Q Okay. The phrase please have respect, is that a
18 suggestion or a request, or is it a rule?

19 A That's a rule. These are all rules.

20 Q Okay. Is respect expected at all times as opposed
21 to just during cheerleading?

22 A At all times they're a cheerleader, whether they're
23 in uniform or not. So they're expected to act accordingly
24 toward their school.

25 Q Okay. How do you decide what is respectful and what

1 is not?

2 A I mean that's a large variety of different
3 situations that you can be put on. So -- or, you know what I
4 mean. Like a lot of different situations that can come up.
5 So really it depends on the situation. At that time the
6 coaches evaluate and see, you know, how we feel, if it's
7 something that is punishable or not. So it's on a kind of
8 case by case basis when it comes to that.

9 Q The second sentence there, remember you're
10 representing your school when at games, fundraisers and other
11 events, you agree with me that this does not say you're
12 representing your school even when you are not at games,
13 fundraisers and events?

14 A Yes.

15 Q Is it your position that students are in fact
16 representing their school all of the time?

17 A When they mention cheerleading or wearing anything
18 Mahanoy related, yes.

19 Q Is that true of cheerleaders or all students?

20 A Well, I would say cheerleaders or anyone that's on a
21 team.

22 Q Okay. If they're not wearing any school
23 paraphernalia, is it fair to say they're not representing the
24 school if it's outside of school hours?

25 A It depends on the situation. But I would say if

1 they're not bringing anything school related into the
2 situation, then yes.

3 Q Okay. What is good sportsmanship?

4 A Good sportsmanship is -- I believe that's outlined
5 in the PIAA regulations as well. But in my opinion, that is
6 also again a wide variety of topics. But any negativity
7 toward other team and cheerleaders and other schools, all of
8 that is considered bad sportsmanship. So good sportsmanship,
9 that's hard to define because obviously that's treating other
10 teams properly and other cheerleaders and your school
11 properly. But it's more what is bad sportsmanship defined as.

12 Q Okay. How do you decide if something is bad
13 sportsmanship?

14 A If it's anything that is posted negatively that
15 would demean a school, a team, a teacher on that team or a
16 coach on a team, anything such as that.

17 Q Do you read the PIAA regulations when you're trying
18 to decide if something is good sportsmanship or bad
19 sportsmanship?

20 A I do refer to -- back to them at times, yes. They
21 are in the school handbook.

22 Q Oh, okay. So you don't read anything separate from
23 the handbook and the cheerleading rules?

24 A No. I use what is outlined in the handbook.

25 Q Okay. Is good sportsmanship required at all times

1 whether or not a cheerleader is at cheer?

2 A Just as long as they are not referring to anything
3 cheerleading related. So if cheerleading is involved into it,
4 yes, I expect good sportsmanship to occur.

5 Q What language is foul?

6 A Any type of cursing, anything derogatory, anything
7 that would be considered racist or in that type of category.

8 Q I ask because I know that TV networks have entire
9 departments that do nothing but try to determine if something
10 is outside the bounds of good taste and thus can't go on T.V.
11 or not. So I was wondering how you decide what is foul
12 language.

13 A Right. And we hold them -- since they are
14 teenagers, we hold them to a higher standard. Because at that
15 age, more types of language is considered inappropriate as to
16 something an adult would watch on television.

17 Q Okay. Is saying that's stupid foul language?

18 A No. I would say it's inappropriate, but not foul.

19 Q Okay. What are inappropriate gestures?

20 A Things such as giving the middle finger, anything
21 that insinuates something inappropriate. I don't know how to
22 answer that. But anything that is sexual in nature, something
23 that is -- that represents something that's inappropriate.

24 Q Okay. I'd like to look at the second bullet point
25 under technology.

1 A Okay.

2 Q It says there will be no toleration of any negative
3 information regarding cheerleading, cheerleaders or coaches
4 placed on the internet. I may refer to this as the negative
5 information provision if that's okay with you?

6 A Yes.

7 Q Okay. What is negative information?

8 A Anything that demeans a school, another cheerleader,
9 another team.

10 Q Or cheerleading itself, correct?

11 A Correct.

12 Q Okay. Now, at the preliminary injunction hearing,
13 you testified that you did not think that it would be negative
14 information to say cheerleaders are at high risk for eating
15 disorders, correct?

16 A Correct.

17 Q Why isn't that negative information regarding
18 cheerleading?

19 A That would be something that research has posted.
20 This would be fact that someone had found.

21 Q Okay.

22 A But I don't feel like that's saying that -- that's
23 just one person's research. Do you know what I mean?

24 Q I am -- I think so. But I am not sure. So let me
25 make sure I do. If something is a statement of fact, then it

1 does not count as negative information?

2 A I am going to be honest, I don't even remember you
3 asking me that question.

4 Q Okay.

5 A But I don't -- it's someone from the outside giving
6 their expression on cheerleading, but not a specific team, not
7 my team. But -- I honestly don't know how to answer that
8 question.

9 Q Okay. Okay.

10 Do you -- well, since you don't remember me asking
11 you before, do you -- am I correct that you think that saying
12 cheerleaders are at high risk for eating disorders would not
13 violate the negative information provision?

14 A Well, that's not a cheerleader stating that, so....

15 Q Well, let's say a cheerleader stated that. Let's
16 say B. posted on Snapchat cheerleaders are at high risk for
17 eating disorders?

18 A She just was repeating something from someone else
19 that she found. She's -- do you know what I mean? She's
20 repeating facts that she found on line.

21 Q And your understanding is that it's not negative
22 information unless you are injecting your own personal views
23 into the statement, is that right?

24 A Right. She's not posting negative information
25 toward our cheerleading squad. She's just posting facts that

1 are insinuating negative information.

2 Q Okay. Okay. So generally factual statements would
3 most likely not violate this rule, is that right?

4 A It depends on what type of facts she's posting.

5 Q Okay.

6 A Or whoever.

7 Q Okay. Can you think of a fact about cheerleading
8 that go would violate this? And you can feel free to make up
9 a fact. It doesn't need to be true.

10 A My goodness. I honestly can't think of something.

11 Q Okay. Fair enough.

12 You also testified that posting I don't really like
13 cheerleading that much any more would violate this rule. Is
14 that correct?

15 A It would be considered negative. So it would be
16 something that would be addressed, but not to the extent of
17 removal from the squad.

18 Q What -- how would you address that?

19 A That would be a situation where the coaches, whether
20 it was a JV coach, member or myself, would talk to them and
21 ask them, you know, why do you feel this way, is there
22 something that can be done about it. I don't feel that that
23 is a means for removal. But it is a situation that should be
24 addressed.

25 Q Okay. So you would talk to the student about that

1 statement?

2 A Yes.

3 Q What would you say to the student in that
4 discussion?

5 A I would ask them why they feel that way. See what
6 the reasons behind it are. If there is something that can be
7 changed so that they feel more comfortable. Because this
8 situation has arised before, people have said, you know, I
9 just don't want to do it any more. And we would ask them why.

10 Q What is the purpose of having a rule that you can't
11 say something like I don't really like cheerleading that much
12 any more?

13 A Well, it's not that they can't say it, but it's
14 something that's negative which would need to be addressed.

15 Q Okay. Would you agree that the rules are generally
16 supposed to tell people what they can and can't do?

17 A Yes.

18 Q Okay. You also testified that if a cheerleader
19 posted something that criticized the selection process for
20 cheerleading that would not violate the negative information
21 provision, is that correct?

22 A (Witness nodding).

23 Q I am sorry, you have to say yes or no.

24 A Yes. Sorry.

25 Q Thank you.

1 What if a student posted criticism of the fact that
2 some cheerleaders had to do JV before making varsity while
3 others didn't, does that violate the negative information
4 provision?

5 A No.

6 Q What do you understand the phrase, quote, placed on
7 the internet, close quote, to mean?

8 A Anything that is -- anything that appears on the
9 internet. Anything that is submitted to the internet.
10 Because anything that's on the internet can be seen by anyone,
11 whether it is in a group, whether it is posted on someone's
12 Facebook wall, everyone can see that some way or another.

13 Q What do you mean by everyone can see that? Thinking
14 specifically some Facebook groups, for example, are closed.
15 Right?

16 A But nothing is really closed.

17 Q Okay.

18 A Everything says that it is private, that it is
19 closed, but it's really not.

20 Q So what do you -- how would say a private message
21 sent over the internet to a closed group of people, how would
22 that become public to everyone?

23 A All someone needs to do is take a screen shot and
24 share that, and then everyone sees it.

25 Q Does the phrase placed on the internet include any

1 communications that travel over the internet, like emails or
2 text messages?

3 A Well, yes. But I mean it's very rare that you would
4 see an email or a text message.

5 Q Doesn't that pose the same risk though, that someone
6 would take a screen shot and share it?

7 A Yes. But I am just stating that that is less likely
8 that we would be notified of that.

9 Q Are you trying to prohibit information that is most
10 likely to be shared with the coaches? Is that what you're
11 trying to do with the phrase placed on the internet?

12 A I don't know what you mean by that.

13 Q You explained that your concern with things being
14 posted on line, even if they're posted privately, is that
15 private communications can still move beyond their intended
16 audience. Did I understand that correctly?

17 A Private conversations could move beyond the intended
18 audience. We're most concerned about public. But private
19 things would still be addressed, not necessarily disciplined.
20 But as a team, they need to be addressed so that we don't have
21 issues within our team.

22 Q Okay.

23 A Does that make sense?

24 Q I think so.

25 So if someone shared negative information regarding

1 cheerleading, cheerleaders or coaches in a private
2 conversation, would you consider that to possibly violate the
3 rules as well?

4 A It is posting negative information. We usually do
5 find out about it. And we do usually do need to address it to
6 some extent so that we don't have chaos within our squad. But
7 when things are posted publically, then that's a different
8 situation.

9 Q How often do you have to deal with fallout from
10 someone saying something negative about cheerleaders or
11 cheerleading?

12 A Like this typical situation, this was the second
13 time that I have come across this.

14 Q What do you mean by this?

15 A A situation where a cheerleader posted something
16 negative on the internet that we had to punish them for it.

17 Q What was the first time?

18 A The first time was actually when April's daughter,
19 SG, posted something on the internet. This was my first year
20 as a coach.

21 We were at a Minersville game, and there were
22 parents making comments about our uniforms. And then S.
23 posted on the internet something to the effect of, now don't
24 quote me on this, but something to the effect of they're just
25 jealous that they don't look as good in their uniforms as we

1 do. So then based on how this was worded, it said
2 specifically any negative information no matter what it was,
3 automatic dismissal from the squad. So she was suspended for
4 the remainder of the regular seasons game which I believe was
5 four basketball games at that time.

6 Q What are -- what do you mean by regular season
7 games? Are there non-regular?

8 A Well, there is scheduled games, then there is play
9 off games. The rest of the scheduled season games. And then
10 she was able to return for the playoff games. So that was how
11 that worked.

12 Q Okay.

13 A And then after discussing that with Tom Smith, we
14 felt that this should be more of a situation by situation
15 punishment, not just every single person who posts anything
16 negative should automatically be dismissed. Because I feel
17 like -- we felt like the situation between what happened
18 between B. and her daughter were completely different, and
19 they should be handled differently.

20 Q Okay. So you considered whether to you thought B.
21 should be punished more harshly and removed including the
22 playoff games, correct?

23 A Because profanity was used in this situation, yes.

24 Q Okay. You earlier said something about having to
25 prevent chaos. I believe you are were referring to sort of

1 being the referee in between negative comments. Is that
2 correct?

3 A Yes.

4 Q Okay. Are there -- can you describe what you meant
5 by chaos?

6 A Can I give you an example?

7 Q Absolutely.

8 A Okay. This year now I didn't handle as much as our
9 JV coach. She's not here. But we had situations where the
10 girls were texting one another arguing over a song that they
11 wanted to use for a pep rally. So one of them said something
12 mean to another girl. I don't even remember exactly what.
13 But she said something mean in this text message. So although
14 we didn't punish them because it was a private message that we
15 weren't in, but we did, you know, sit them down. We had to
16 have multiple conversations because we need to put the fire
17 out, so to say, within the team. Because we don't something
18 like that to continue. So although it's not something that we
19 can control, it's still something that needs to be addressed
20 so we can have a team-like environment.

21 Q Is that fairly typical occurrence?

22 A With teenage girls, yes.

23 Q Okay. So just so I am -- I make sure I understand
24 what you -- how you apply this negative information rule. Do
25 I understand correctly that if something is private, it may

1 cause, to use your word, chaos, you might have to deal with
2 the fallout, but it would not be a violation of this rule, is
3 that correct?

4 A Right.

5 Q Okay. And is there some middle gray area where
6 something is not say a private team text message, but is not
7 public on the internet?

8 A Well, when things are posted on social media, I
9 consider that public.

10 Q Okay.

11 A When things are shared between one another within a
12 single email, or a single the text message, I consider that
13 private. But when things are sent in groups, like a group
14 message, I consider that public because you are sharing it
15 with an entire group of people.

16 Q Sorry. What would a group text message count as?

17 A There are different situations. Like there is a
18 group included in. So if someone posts something negative or
19 profanity within my group, that's punishable because although
20 they're out of school, it's still a cheerleading group.
21 They're posting like F cheer, F school or whatever in this
22 public group, and I am their coach, I am in this group, that
23 would need to be punished. But if they have some group I have
24 never heard about and they're speaking about it, then there is
25 nothing that I can really do on their private conversations

1 between cheerleader to cheerleader. Does that make sense?

2 Q Well, what if someone brings you a screen shot of
3 the text and says this was sent to fifty students in the
4 school in a group text message? I mean you would have the
5 same amount of information about that scenario as you did
6 about say B's Snap that someone took a photo of, correct?

7 A In my opinion, a Snap is something that's posted for
8 all to see and not just in a group text.

9 Q And is that true even if --

10 A It's similar to like when you post something on your
11 wall on Facebook, everyone sees it. It's public, although
12 there a large amount of people that will see it and you -- I
13 mean do you know what I mean?

14 Q I am honestly not sure I do.

15 I know that -- because I know that some social media
16 platforms might have -- you might have a lot of friends, but
17 they're not public. Right? So like the coach at an opposing
18 school couldn't read them. It's just -- it's private. It's
19 just with a large number of people.

20 A Yes.

21 Q And I also know that today younger people text with
22 larger groups of people than say I text with. So I am trying
23 to understand why those things are different to you, the large
24 group text versus the small group, small closed group social
25 media post. Is it just that's easier to have a bright line

1 rule, social media violates this and texts don't, or --

2 A Basically, yes. I mean to me anything that's posted
3 on social media can be spread throughout the internet. As for
4 a text, if that situation as you described, she shared it with
5 the entire school, that would be something that I would
6 address to the principal and see how he wanted to address that
7 at that time. But I personally would not take the lead on
8 disciplining that. I would take that to my higher up and see
9 how he wanted that to be handled.

10 Q Okay. Would it violate the negative information
11 provision, to spread something that somebody else wrote on
12 social media?

13 A Something someone else wrote negative about --

14 Q Correct.

15 A It depends again on the situation. So if, for
16 example, a cheerleader put something on there about myself or
17 April at the time, I feel like that would be something that
18 would need to be addressed. But if someone -- if she is
19 sharing someone else's post, it wasn't her that was posting it
20 initially, so I would try and find out the person who
21 initially posted, if they were a cheerleader, and address that
22 issue at that time.

23 Q Okay. So say a cheerleader texts another
24 cheerleader something negative about cheerleading and the
25 second cheerleader who received the text takes a screen shot

1 and shares it with the rest of the team. Has the second
2 cheerleader violated the rule, the negative information rule?

3 A Not as it is written.

4 Q Okay.

5 A Because, for example, that's how we found out about
6 it.

7 Q Okay.

8 A Someone took a screen shot of it and sent it to
9 April. I think it was her daughter maybe. Someone sent it to
10 her. So would she be in trouble by sending it in, taking a
11 screen shot, sending it to April? She's sharing it. So
12 really I mean you couldn't discipline that for her sharing it
13 to April.

14 Q Why not?

15 A Because she was trying to inform us as to about what
16 was posted on the internet.

17 Q Okay. So the intention matters there?

18 A Yes.

19 Q So if the second cheerleader shared it with the rest
20 of the team and said I totally agree with this, LOL, that
21 would be different than if they shared it with the rest of the
22 team and say look what cheerleader one is doing, this is
23 awful?

24 A I would say yes. Intention is definitely -- it
25 would be taken into consideration as to how we would deal with

1 that situation.

2 Q Okay. How long after something is posted would you
3 consider punishing a cheerleader?

4 A I -- we have usually find out about it within a
5 couple days.

6 Q Okay.

7 A Now, if something happened years down the road,
8 would I try and punish them for it; no, because it's not even
9 the same school year, it's not even the same squad. So if it
10 happened -- if I found out that someone last year posted
11 something, they would have had to have been punished last year
12 because it was last years item to deal with.

13 Q Okay. And why? Why do you draw the line there,
14 like same year?

15 A I mean I haven't come across the situation. So I am
16 just trying to reason through it right now. But just based on
17 the fact that it is something that occurred then, they would
18 have been punished, and then would have had to re-try out.
19 The whole situation would have kind of started all over again.
20 They would have been -- whatever punishment was put forth that
21 following year for what they did, I am -- pretty much would
22 have been wiped out. They would have gone to re-try out and
23 been fine any way for the following year.

24 Q Okay. So new year, clean slate?

25 A Right. We always start the new year with a clean

1 slate.

2 Q Okay. On that topic, at the preliminary injunction
3 hearing, you testified that you wanted B. to be permanently
4 removed from the team. What did you mean by that?

5 A Removed for that school year. And then she was able
6 to try out, or would have been able to try out the following
7 year. She would have had to either way because she was on JV.
8 She would have had to try out to try to get a varsity spot any
9 ways. So either way, she had to try out.

10 Q Okay. So you don't ever consider like lifetime ban
11 someone from cheerleading?

12 A No.

13 Q Okay.

14 A Not unless for some reason the school board or
15 someone told me that I had to. But that's the only situation
16 that would happen.

17 Q Okay. And when someone is trying out for
18 cheerleading, do you take into account stuff that happened in
19 past years?

20 A I do not.

21 Q Okay. I want to talk about that italicized language
22 at the top of D3 that you mentioned. That says all of the
23 information below is at the coaches' discretions, and rules
24 may be subject to change. If there is a situation with
25 extreme circumstances, it will be addressed at the time. Have

1 you ever changed the rules?

2 A I have never actually changed -- this year I have
3 been trying out new rules. But I haven't actually changed
4 them. So here's an example.

5 Q Sure.

6 A Over the summer, we have no real way to punish
7 cheerleaders for coming late to practice, because usually it
8 would be they come late, then the following game they are
9 benched. But there is no games over the summer. So we
10 decided if they're late, then they have to do ten toe touches.
11 I don't know if you know what that is. They have to do ten
12 jumps. So although we didn't actually change them in here
13 yet, we were -- we did add that to our list of rules --

14 Q Got it.

15 A -- unofficially I guess you could say.

16 Q Okay. Are there any other rules that you announced
17 verbally but haven't yet written down?

18 A There is one where we say, for example, they can't
19 wear their warm ups outside of game day because warm-ups are
20 considered a uniform or something like that. But there is
21 nothing else that I can think of.

22 Q Okay. When you create a new rule, like toe touches
23 for being late in the summer or no warm ups outside of game
24 day, how do you communicate that to the cheerleaders?

25 A It's usually communicated at practice. Then

1 sometimes I also reminded them, we do have a group text, so
2 sometimes I remind them of things like that in a group text as
3 well.

4 Q Okay. I noticed that the cheerleading rules,
5 several of the rules have specific consequences identified.
6 Like if you are academically ineligible for three consecutive
7 weeks, you will be dismissed from the team. Or if a
8 cheerleader is benched three times, they'll be dismissed from
9 the squad. But then other rules don't have specific
10 consequences listed. What is the range of consequences that
11 you might impose for violations of those rules?

12 A That could be from simply sitting out a quarter at a
13 game. Like I said, doing jumps at a practice, all of the way
14 to being suspended temporarily or permanently from the squad
15 for that year.

16 Q What would a temporary suspension look like?

17 A That would be like April's daughter, where she's
18 suspended a certain amount of games based on the offense.

19 Q Do you have any internal guidelines for what gets
20 punished how?

21 A What do you mean by internal guidelines?

22 Q When you are trying to decide what punishment to
23 impose, what is it that you are thinking about? Are you
24 thinking about how you punished other students and trying to
25 sort of compare --

1 A That's definitely taken into consideration, how much
2 does it effect the team. Moving forward will it continue to
3 be an issue if we don't address it, to what extent do we need
4 to address it, so on.

5 Q Okay. At the preliminary injunction hearing, you
6 testified that the main purpose of the cheerleading rules was
7 so that the cheerleaders would learn to follow rules and learn
8 rules have consequences. Do I remember that correctly?

9 A Yes.

10 Q Okay. You also testified that rules teach these --
11 rules teach team building skills and other skills that
12 students will take with them when they graduate?

13 A Right.

14 Q Is there any other purpose of the cheerleading
15 rules?

16 A In addition to that, just that we can function as --
17 so that we can function as a team and present ourself
18 accordingly as representatives of our school.

19 Q Okay. And I believe that you mentioned earlier that
20 some of the rules are about safety, like tying your hair back?

21 A Yes.

22 Q And some of them are about uniformity?

23 A Yes.

24 Q Okay. Any other purpose for any of these?

25 If you want to take a minute and look at them,

1 please do.

2 A And then as -- the academic policy, we also want to
3 put school first. So that's very important as well. So we
4 definitely want our cheerleaders to make sure that their
5 grades are where they need to be first before we worry about
6 the cheerleading aspect. So that rule is in there as well
7 because again, school is very important.

8 Q Okay. What are the other skills other than team
9 building that you want your cheerleaders to take with them
10 when they graduate?

11 A Just basic understanding that you need to follow
12 rules when you are part of something, whether it is at the
13 workplace, whether it's at -- in a college, that there are
14 different rules that you have to follow in society.

15 Q I am trying to understand how that connects to
16 punishing students for what they do when they're not at
17 cheerleading.

18 A I can give you an example.

19 Q Sure.

20 A Okay. My husband works at a distribution center,
21 and someone hacked into his Twitter account. And they were
22 posting negative things about Auto Zone on the internet. They
23 were about to fire him for his job because they were saying
24 negative things about Auto Zone on the internet until he was
25 able to prove that it was not him posting these things on

1 line. So I have heard of that, in addition to people during
2 job applications looking up peoples Facebook pages and using
3 that to hold it against them for their character. So there
4 are situations where people do look at things on the internet
5 and use that to make their decisions for punishment.

6 Q So the lesson is, even things that you do on your
7 own time can still effect other people and go beyond your
8 control, is that the lesson?

9 A Absolute. Absolutely.

10 Q Okay. Do you think there is value in teaching kids
11 that different rules apply to different activities?

12 A That is true. They do, and yes.

13 Q Okay.

14 A For example, students and cheerleaders are held to
15 different rules. Students obviously have to follow the
16 handbook rules. But as cheerleaders, they -- they're
17 representing our entire school and all of our team, so they're
18 held to a higher standard.

19 Q So that consideration is sort of specific to
20 cheerleaders as opposed to kids on other teams or other
21 extra-curriculars?

22 A Every coach can make their own set of rules. So we
23 don't have a uniform set of rules. So each coach has a
24 different standard as to how they want to set their rules for
25 their team.

1 Q Yes. I am just trying to understand if something
2 about the nature of cheerleading justifies some of these rules
3 as opposed to general lessons for -- that all students would
4 benefit from.

5 A As cheerleaders, they have to be leaders and
6 representatives of their school. They often have younger kids
7 looking up to them. So I feel that they really need to put
8 forth a positive representation for their school more so than
9 just your average student.

10 Q And swearing is incompatible with that positive
11 representation?

12 A Absolutely.

13 Q Okay. So am I right that you don't try to monitor
14 your cheerleaders' behavior when they're not at cheerleading?

15 A Not intentionally, no.

16 Q So you rely solely on other students reporting
17 you -- reporting to you things that have happened outside of
18 school?

19 A Yes.

20 Q Do you encourage students to report other rules
21 violations to you?

22 A No.

23 Q Okay. Why not?

24 A I would never specifically say if you see something
25 else someone posts on the negative to tattle on them. That's

1 just what they're taught when their young. Don't tattle on
2 someone else. It's just something that I have never enforced.
3 But if someone does come to me with negative information, I
4 feel that in some capacity, I would have to address it,
5 whether it's just speaking with the person, or if going
6 through the rules and see if it applies to a rule.

7 Q And is -- as you feel that you would have to address
8 it, only if you think it is going to impact the team?

9 A For the most part, yes, or the school.

10 Q Okay.

11 A Or the well being of any student in the school.

12 Q So if someone did something the equivalent of
13 tattling, to use your words, say a cheerleader came to you and
14 said another cheerleader stubbed their toe and said shit,
15 would you consider punishing that?

16 A I would have to have proof that they said it. But I
17 would definitely talk to them, especially if they're in
18 uniform and explain to them when you are in uniform, you
19 cannot curse.

20 Usually in a situation like that when I am not sure
21 they said it, it's just one single person reporting it, I
22 would address them as a team, I would just say just remember
23 you are in uniform, you have to remember that you make sure
24 you're not using profanities and stuff like that.

25 Q Okay.

1 A But I would need to be sure before I actually punish
2 them that they said it.

3 Q Okay. What if the incident that was being reported
4 to you was not when they were in uniform, it was say B. at the
5 Cocoa Hut using the F word, not on Snapchat, but to a group of
6 all of cheerleaders, they were hanging out, someone reported
7 that to you, would you consider punishing B. for that?

8 A Just as long as it's not anything to -- really
9 cheerleading related, then no. Like, for example --

10 Q Okay.

11 A -- if there was a teacher in there, she was like F
12 cheerleading. Do you know what I mean? I would, at that
13 time, pull her aside, be like I heard that you said this, is
14 there a reason that you said this. I just want you to know
15 that people hear what you said. But she wouldn't necessarily
16 be punished. But I would address it at that time.

17 Q So at the preliminary injunction hearing, you
18 testified that it was just the profanity alone and the middle
19 finger that were punishable even if there had been no
20 connection to cheerleading?

21 A No. If it was, it had to be connected to
22 cheerleading in order for it to be punishable.

23 Q Okay. So when you testified at the preliminary
24 injunction hearing, you were asked, was it the profanity and
25 the profanity gesture alone that caused the removal, you

1 answered yes.

2 A I think what I thought you meant by that question
3 was there other factors that we took into consideration other
4 than the Snap for her removal from the squat. But it was the
5 gesture and the Snap linking to cheerleading which was the
6 reason of the removal.

7 Q Okay. But even if it had not been negative, I asked
8 you if it had said cheerleading is fucking awesome, if that
9 also violated the rules. You said yes.

10 A Yes, because it's profanity linked with
11 cheerleading.

12 Q Okay. So if B in the Cocoa Hut says to the
13 cheerleaders, cheerleading is fucking awesome, you would
14 consider punishing that if somebody told you about it?

15 A I would address it. Again, it wasn't something that
16 was posted for the public to see. So that's a different
17 situation. But it would still be something that would be
18 addressed.

19 Q Not because it violated the rules, but because you
20 think that you would to deal with the fallout, is that right?

21 A To an extent. And because although that's not --
22 it's not actually addressed in here because it wasn't at a
23 game. It wasn't unsportsmanlike conduct, it wasn't on
24 technology, but it would be something that's -- that I feel
25 would need to be addressed just so that they know that even

1 though you may not think that there are people around that are
2 watching you, people hear what you are saying.

3 Q Okay. But if B. had just stubbed her toe in the
4 Cocoa Hut and said fuck to all of the cheerleaders and whoever
5 else was in Cocoa Hut, would that be something that you would
6 feel that you need to address?

7 A No.

8 Q Are you concerned that you will end up hearing more
9 reports of rule violations about kids who are unpopular or are
10 having some kind of fight with their teammates than kids who
11 generally get along better with their teammates or happen on a
12 particular day to be getting along better with their
13 teammates?

14 MR. BROWN: Objection to the form. But if you
15 understand, go ahead and --

16 THE WITNESS: I don't --

17 MS. TACK-HOOPER: If you don't understand that, I
18 could unpack it a little bit.

19 MR. BROWN: I didn't understand it.

20 BY MS. TACK-HOOPER:

21 Q Fair enough. Fair enough.

22 So you said that you're not trying to monitor kids'
23 behavior when they're outside of school, you mostly just hear
24 about what students report to you that happens outside of
25 school; correct?

1 A Yes.

2 Q Okay. It seems to me like that would end up in a
3 situation where the things that you hear about are not things
4 that were said by students that everybody agreed with, but
5 things that were said by someone that their teammates didn't
6 like. So that your -- seems to me like you might end up
7 hearing more about rule violations by kids who at that
8 particular moment are less popular with their teammates than
9 others. Does that seem accurate to you?

10 A Not necessarily. I mean they let me know no matter
11 what, so and so has jewelry on, so and so is wearing the wrong
12 shirt, so and so forgot their bloomers. So it's across the
13 board that I hear things from. It's not any particular group,
14 anyone being singled out that's unpopular. It's just across
15 the board. It's just this is the most popular instance, this
16 is what most people are I guess talking about, the situation
17 with B. and whatnot. But I get texts from all different girls
18 all times of the day about different situations.

19 Q Okay.

20 A So it's no specific group, no specific person that's
21 considered unpopular. It's just -- it's just how it goes.

22 Q Okay. Okay. All right. In terms of how you
23 learned about B's Snap, would Coach Gnall be more familiar
24 with that?

25 A Yes.

1 MS. TACK-HOOPER: Okay. Okay. All right.

2 (Objections and responses to Plaintiffs'

3 interrogatories produced and marked Deposition Exhibit Number
4 P5.)

5 BY MS. TACK-HOOPER:

6 Q I have handed you what has been -- just been marked
7 as Exhibit P-5. These are defendant's objections and
8 responses to plaintiffs' first set of interrogatories.

9 Have you seen this document before?

10 A I believe so.

11 Q Can you please look at No. 3? It starts at the
12 bottom of page four and goes through page six.

13 Have you read that before?

14 Feel free to take a minute, however long that you
15 need.

16 A I may have. It looks familiar.

17 Q Okay. Will you take a minute and read it? I am
18 going to ask you if there is anything inaccurate in it.

19 A Okay.

20 MS. TACK-HOOPER: Thank you.

21 MR. BROWN: Off the record.

22 (Discussion held off the record.)

23 MR. BROWN: Are you done?

24 THE WITNESS: Yes.

25 BY MS. TACK-HOOPER:

1 Q Was there anything inaccurate in there?

2 A I don't believe so.

3 Q Okay. Anything that you feel was missing?

4 A Not to my knowledge.

5 Q Okay. So it says that you and Coach Gnall jointly
6 decided to remove B. from the team, right?

7 A Yes.

8 Q Did you need approval from someone else to do that?

9 A No.

10 Q Did you tell B's mother that it was ultimately
11 Principal Smith's decision?

12 A I did not.

13 Q Why did you decide to discuss it with Principal
14 Smith first?

15 A Every time we make any type of discipline-related
16 decision, we generally talk to someone above us first just for
17 their advice on how the situation should be handled. So we
18 did want to go to Tom Smith first to see if it was an
19 appropriate way to handle the situation. He said he just
20 wanted to see for sure if she posted it, which she told him
21 she did. And then after we got that confirmation, we, April
22 and I, made the decision that she would be dismissed from the
23 squad.

24 Q Okay. You said you would talk to the Principal
25 before making any kind of discipline decision. What do you

1 consider discipline? I am assuming that you don't talk to the
2 Principal before giving somebody toe touches?

3 A Right.

4 Q Okay.

5 A Anything that we feel is extreme.

6 Q Such as?

7 A Such as removal or suspension from a team or
8 something like that.

9 Q Okay. I am having trouble thinking of anything
10 else that would be in the category actually. Is there
11 anything other than suspension or removal from a team that you
12 talked to him about?

13 A Not -- no, they're the only two main extreme
14 punishments I would say.

15 MS. TACK-HOOPER: Okay. All right. Let's take a
16 break.

17 (Brief recess from 10:03 a.m. to 10:16 a.m.)

18 BY MS. TACK-HOOPER:

19 Q Okay. So we were talking about various situations
20 and whether you would punish cheerleaders for swearing outside
21 of school. And I think we were mostly talking about that in
22 the context of the negative information provision. But there
23 is, of course, also this respect provision that we looked at
24 that says good sportsmanship will be enforced. This includes
25 foul language and inappropriate gestures. Would it violate

1 that rule if B. said the F word at the Cocoa Hut in the
2 presence of whoever happened to be in the store at that time?

3 A No.

4 Q No. Why not?

5 A Because it's not linked to cheerleading.

6 Q So you interpret the respect provision as I have
7 been calling it to only apply to language and conduct that
8 connects to cheerleading in some way?

9 A Yes.

10 Q Okay. I believe that you also testified at the
11 preliminary injunction hearing that B. was punished for the
12 Snap, and not based on anything else that she had done. Is
13 that correct?

14 A Correct.

15 Q What rules did the Snap violate?

16 A The PIAA rules along with the cheerleading rules
17 speaking about posting negative information using technology.

18 Q Okay. Did it violate the respect provision as well?

19 A Could you just remind me --

20 Q Certainly. This is D3. The first bullet under
21 sportsmanship and responsibilities/fundraising.

22 A Yes.

23 Q It did violate that?

24 A Yes.

25 Q When I say the PIAA rules, is there a specific part

1 of the handbook that you're referring to?

2 A I believe pages 80 and 81 of the handbook.

3 Q Okay. This is D4.

4 I am handing you what has previously been marked as
5 D4, page 83 from the handbook. There is a star by number
6 eight, personal conduct. Is that the section that you were
7 referring to?

8 A One of them.

9 MS. TACK-HOOPER: Okay. Okay. P-6.

10 (Rules document produced and marked Deposition
11 Exhibit Number P6.)

12 BY MS. TACK-HOOPER:

13 Q Okay. I am handing you P-6 which is an excerpt from
14 the handbook that I believe contains all of the sections on
15 co-curricular activities.

16 Is this the section of the handbook you are
17 referring to?

18 A Let me just take a second to look through it.

19 Q Please do.

20 A Yes. This is the section that I was speaking about.

21 Q Which particular parts in there other than the
22 personal conduct rule that we looked at?

23 A Yes. I believe that's repeated in here. I believe
24 most of it is contained in numbers thirteen and fourteen.

25 Q Okay. So the personal conduct section says any

1 participant whose conduct is judged to reflect a discredit
2 upon himself/herself, the team or Mahanoy schools, whether or
3 not such activities takes place during or outside school hours
4 during the school sports season would be subject to
5 disciplinary action as determined by the co-coach.

6 Is that what you're referring to as the basis for
7 B's punishment?

8 A That in combination with our cheerleading rules as
9 well as thirteen and fourteen, so it's a combination of the
10 several different ones.

11 Q Okay. How did the Snap reflect a discredit upon
12 herself, the team or the Mahanoy schools?

13 A It gave our squad a negative image that our
14 cheerleaders would post profanity on line on social media.

15 Q And would this be true whether or not she had
16 mentioned cheer?

17 A By mentioning cheer is what made it inappropriate
18 linking it to our school.

19 Q So if it had just said fuck school, fuck softball,
20 would you have punished her?

21 A That would be a softball and school issue. It would
22 be in their hands at that point.

23 Q Okay. And is it your understanding that the school
24 could punish her for that in some way?

25 A I don't believe that they have anything that they

1 could -- any rules set forth that they can do that.

2 Q Okay.

3 A Softball maybe, but not the school.

4 Q Okay. So you mentioned section fourteen in there.

5 Can you look at paragraph fourteen? It contains a list of

6 bullet points listing different causes for removal from a

7 team. Correct?

8 A Yes.

9 Q Were any of those bullet points a basis for removing

10 B. from the team?

11 A No. But it does say that it is not limited to the

12 following.

13 MS. TACK-HOOPER: Okay. This will be P-7.

14 (Document produced and marked Deposition Exhibit

15 Number P7.)

16 BY MS. TACK-HOOPER:

17 Q I have just handed you Exhibit P7, policy 218 on

18 student discipline.

19 Is this policy separate from the handbook? Are you

20 familiar with this policy?

21 A I am not, no.

22 Q Okay. So this policy was not part of your decision

23 to punish B.?

24 A Let me just read it quick.

25 Q Certainly.

1 A Although this may be integrated into it, this was
2 not used to make my decision, but this may be somehow
3 mentioned in there.

4 Q When you say in there, what do you mean?

5 A In the handbook.

6 Q Okay. No. 2 in this policy under off campus
7 activities states that the code of student conduct applies to
8 campus activities if the student is a member of an
9 extracurricular activity and has been notified that particular
10 off campus conduct could result in exclusion from such
11 activities. How was B. notified that her Snap could result in
12 exclusion from the cheer team?

13 A Before or after it took place?

14 Q Before.

15 A We did not go into detail about every situation in
16 our rules. So that was covered under the technology section
17 along with, I am not sure what you call that, the negative
18 provision.

19 MR. BROWN: The respect.

20 BY MS. TACK-HOOPER:

21 Q The respect provision?

22 A I am sorry?

23 Q No problem.

24 Was your decision to punish B. based on any other
25 rules or policies that we haven't looked at yet today?

1 A No.

2 Q Okay. Sitting here today, can you think of any
3 additional justifications for punishing B. that you didn't
4 rely on at the time but have subsequently thought of?

5 A Nothing that we haven't already discussed.

6 Q Okay. When you made the decision to punish B., what
7 was your understanding of who had been negatively impacted by
8 the Snap?

9 A The decision wasn't made based on who was negatively
10 impacted, it just was made based on the fact that there was
11 negativity put out there that could impact students in the
12 school.

13 Q Okay. In your view, was the impact -- well, did B's
14 Snap have any impact on students that you were aware of?

15 A To an extent, yes.

16 Q What? And what was that impact?

17 A I had several students come up to me throughout the
18 day while I was teaching saying to me did I see it, what was I
19 going to do about it, saying that it was inappropriate. And
20 these were cheerleaders and non-cheerleaders that did approach
21 me.

22 Q And was -- you earlier described a lot of students
23 telling you about things that other students had done?

24 A Yes.

25 Q Was this different from the usual back and forth

1 that you hear about every day from the cheerleaders?

2 A At the time, I didn't understand the extent of it,
3 so I thought it was just something minor. So at the time, I
4 didn't treat it with as much severity when they approached me
5 in class.

6 So at the initial time, the very first time the
7 student approached me before I saw it, before April came to
8 me, I did not understand the severity of the situation.

9 Q And what was it that you didn't understand?

10 A I didn't see the post. They were just telling me
11 there was a post. They were asking me if I saw it.

12 Q And you felt differently after you saw the Snap?

13 A After I understand the contents of it, yes.

14 Q Okay. And why did you feel differently about it
15 once you saw the Snap?

16 A Because I didn't realize it included profanity. I
17 didn't see the gesture at the time.

18 Q Okay. So just the idea that she had posted
19 something negative about cheerleading didn't seem like a big
20 deal to you, but the profanity and gesture made it more
21 serious in your mind?

22 A Yes. Absolutely.

23 Q Okay. In your view, did the Snap actually disrupt
24 any school activities of any kind?

25 A Other than taking class time away from my students

1 briefly, I cannot think of anything other than that.

2 Q And that was because they were telling you about the
3 Snap?

4 A Yes. There were several different students that
5 approached me at different times throughout the day, yes.

6 Q Is it fair to say that reporting the Snap to you
7 disrupted class more than the Snap itself?

8 A Well, the Snap itself is why they reported, because
9 they were upset about it. But I guess you can say that, that
10 the reporting is what took time away from class.

11 Q On a daily basis, how much time do you spend with
12 your students just hearing about things that they were upset
13 about? Is that something that happens on a daily basis?

14 A Not so much. Maybe after school, but not during the
15 day.

16 Q Okay. So in your view, if there was disruption, it
17 was the class time that the students spent telling you about
18 the Snap, correct?

19 A Yes.

20 Q Was there any other -- anything else that was
21 disrupted?

22 A It was continuous over several days that they were
23 approaching me about the Snap. So it did take away
24 essentially in my algebra class, the one that D. was in. That
25 one was disrupted quite a bit for just a couple days after it

1 happened. But then we continuously told them that we could
2 not discuss it, then it settled down.

3 Q Okay. And who is D.?

4 A D.F. She was a varsity cheerleader at the time.

5 Q Okay. And what did those conversations during
6 class, how did they go?

7 A They were more like have you seen it, what is
8 happening. And just like -- April and I just kept addressing
9 the situation the same way, we can't talk about it, we can't
10 talk about it, I am not sure what you want me to say.

11 Q Okay. And so how long was this conversation each
12 day?

13 A Five, ten minutes.

14 Q How do you fill five to ten minutes with I can't
15 talk about it?

16 A They would just keep going on and on and on. I just
17 kept repeating that there is nothing that I can do, nothing
18 that I can tell you right now. But they were visibly upset,
19 like can't you do anything, what are you going to do, have you
20 seen it.

21 Q Okay. And did the fact that some students were
22 visibly upset by this influence your decision about how to
23 punish B. at all?

24 A No.

25 Q Okay. Have you previously experienced disruption of

1 class or any school activities because of something a student
2 said outside of school?

3 A No.

4 Q Have you previously experienced disruption of class
5 or school activities because a student swore outside of
6 school?

7 A No.

8 Q Did you have any reason to think that this
9 particular incident would disrupt class or school activities
10 other than the fact that kids kept asking you about it?

11 A No.

12 Q After you removed B. from the team, did you tell the
13 team why she had been removed?

14 A No.

15 Q What did you say to the team about why she wasn't
16 there?

17 A We did not say anything to them.

18 Q Okay. Did you continue to get questions about the
19 Snap?

20 A Yes.

21 Q And you just did not answer them?

22 A We just told them that we could not talk about it.

23 Q Okay. After the court ordered B. back on the team,
24 how did her return to the team effect cheerleaders?

25 A They were upset about it. They felt that it was

1 unfair that she was being returned to the team.

2 Q And when you say they, who specifically are you
3 referring to who felt that way?

4 A I had several students approach me. But it seemed
5 collectively as a team, the majority of them were upset.

6 Q So who specifically approached you?

7 A Must I answer that question?

8 Q Yes.

9 A Okay.

10 Q I am sorry.

11 A I just know that they did not want me to mention
12 their name, and that's why I am hesitant on mentioning it, one
13 of them.

14 MS. TACK-HOOPER: If you want to go off the record
15 for a second, we can chat about that. Let's go off the
16 record.

17 (Discussion held off the record.)

18 BY MS. TACK-HOOPER:

19 Q Okay. So you do not have to tell me who
20 specifically approached you in light of your lawyer's
21 statements. You can just tell me how many people told you
22 that they were upset and whether they were on variety or JV.

23 MS. TACK-HOOPER: We're back on the record. Your
24 lawyer has represented to me that the district is not going to
25 rely on the testimony of any students in this matter so --

1 MR. BROWN: Other than the plaintiff.

2 BY MS. TACK-HOOPER:

3 Q Other than the plaintiff. So in light of that, of
4 that representation, you do not have to name the specific
5 students who spoke with you. If you could tell me just how
6 many students spoke with you and whether they were on varsity
7 or JV cheerleading, that's fine.

8 A Okay. At least four that I can think of, four
9 specific cheerleaders that approached me about being upset
10 about her return to the squad on JV.

11 Q Okay. And you also testified that it was your
12 impression that the whole squad was upset. Was that because
13 of what these students told you about how other people felt?

14 A It was just their reaction in general.

15 Q To what, to B's presence?

16 A Yes.

17 Q Okay. And what is your understanding of why they
18 were upset that she was back?

19 A My understanding was that they were upset that she
20 violated the rule. They understood, although we did not tell
21 them, they knew what she posted. And they were upset that she
22 was able to post such a thing, but not be punished for it.

23 Q Okay.

24 A In addition, do you want me to tell you about the
25 varsity members as well?

1 Q Oh, yes. Please. I am sorry. I thought that you
2 said they were only on JV?

3 A Yes. There was four on JV. I believe that year we
4 had eight girls including B. on the squad. So that would have
5 been four out of the eight that approached me. And then on
6 varsity, there was at least four girls who approached me.

7 Q Okay. Out of how many people on varsity?

8 A Varsity I believe was eleven or twelve that year.

9 Q Okay. Now, B's on varsity now?

10 A Yes.

11 Q Correct?

12 Does there still seem to be any lingering resentment
13 toward B.?

14 A There is still anger, yes.

15 MS. TACK-HOOPER: Okay. Let's mark this P-8.

16 (Document produced and marked Deposition Exhibit
17 Number P8.)

18 BY MS. TACK-HOOPER:

19 Q I am handing you B8. It appears to be an image of a
20 text message with your name on it.

21 Is this a text that you received?

22 A Yes.

23 Q Who was it from?

24 A I have to look back in my records to see.

25 Q Okay. I assume the redacted name is B., is that

1 correct?

2 A Yes. It's -- it appears they misspelled it.

3 Q Okay. Is this text significant in any way in your
4 view?

5 A They sent me this text because they were upset that
6 she was returning, yes.

7 Q Okay. Do you recall whether this was a student or
8 an adult texting you?

9 A This was a cheerleader.

10 Q Okay.

11 A It was one of the cheerleaders that I discussed had
12 contacted me.

13 Q Okay. Okay. Did you respond to this text?

14 A I don't believe so.

15 Q Okay. How did you handle people telling you that
16 they were upset that B. was back on the squad?

17 A I just told them that wasn't our decision, and that
18 they must treat her as anyone as if she was never removed from
19 the squad.

20 Q Okay. In the district's responses to
21 interrogatories, which are P-5, if you want to look at them,
22 otherwise, I can just read you the portion that I am referring
23 to.

24 A Okay.

25 Q At the top of page eleven, the district says other

1 than the operative matter involving BL, the district is not
2 aware of any incident since August 2016 in which punishment
3 was considered for a student in response to off campus speech
4 pursuant to the MAHS cheerleading rules or the code of conduct
5 for an athletic team or extracurricular activity. Does that
6 seem accurate to you?

7 A I am sorry, where is that?

8 Q The top of page eleven.

9 In other words, the district has said it's not aware
10 of any incidents since August 2016 in which punishment was
11 considered for a student in response to off campus speech.

12 A There haven't been anything after August, except I
13 believe that S. was prior to that.

14 Q And no incidents other than those two since you have
15 been a cheerleading coach that you're aware of?

16 A Not that I am aware of.

17 Q Okay. Were there any incidents at any time in your
18 four years as a cheerleading advisor in which you considered
19 punishment for other forms of disrespect?

20 A No. We have not come across situations like that.

21 Q Okay. What about other off campus personal conduct,
22 anything that you can think of?

23 A No.

24 Q Okay. I want to talk very briefly about B. as a
25 cheerleader. As you know, she was upset that she didn't make

1 JV, and that that was part of the reason she posted that Snap.
2 Why -- do you recall why she didn't make -- I am sorry,
3 varsity. Do you recall why she didn't make varsity that year?

4 A Her score was too low.

5 Q Okay. Has B. violated any other rules since
6 returning to the team or since the court order in this case
7 that you're aware of?

8 A Just missing practices.

9 Q Okay. Are you currently considering any other
10 punishment for B.?

11 A Based on what?

12 Q Anything. I don't --

13 A Based on the missed practice or --

14 Q Sure. Yes. Are you considering anything based on
15 --

16 A Any rule violations will be dealt with at the time.
17 So if you miss practice, then that will be addressed at the
18 time.

19 Q Do you -- when you are deciding how and whether to
20 punish someone, are you looking at some sort of cumulative
21 conduct? So if somebody, you know, uses a cell phone during a
22 game and is late to a practice, and says something mean about
23 cheerleading, do you ever -- would you ever consider punishing
24 someone for a bunch of things that might not on their own be
25 significant, but together seem significant to you?

1 A No.

2 Q This has previously been marked as D2.

3 Is this -- what is this? Do you know what this is?

4 A I believe this was a Snapchat that April received.

5 Q All right.

6 A Because you can take a Snap, like a picture of the
7 floor or something, and then write text on it. I believe
8 that's also a Snap.

9 Q It says love how me and, redacted, get told we need
10 a year of JV before we make varsity, but that doesn't matter
11 to anyone else. And then there is an upside down smiley face.
12 Does that violate any rules if it's a Snap that says that?

13 A No.

14 MS. TACK-HOOPER: Okay. All right. This will be
15 P-9.

16 (Document dated 9/27/17 produced and marked
17 Deposition Exhibit Number P9.)

18 BY MS. TACK-HOOPER:

19 Q You have Exhibit P9, which is an email thread.

20 If you would like to take a moment to read it, that
21 probably makes sense.

22 You can just read the portion from you on page one.

23 A Okay.

24 Q Okay. It says in addition to this incident,
25 numerous students expressed that she was giving blank a hard

1 time for making varsity squad as an incoming freshman. This
2 is also against our rules.

3 What does it mean to give someone a hard time?

4 A From what I understand is she was being told that
5 she didn't deserve to be on the squad because she was a
6 freshman.

7 Q Okay. And what rule did that violate?

8 A Just not being respectful toward your teammates.

9 Q Okay. Did you investigate whether that in fact
10 happened?

11 A I did not find any further information on that.

12 Q Okay. And you have not punished B. for that
13 incident?

14 A I have not, no.

15 Q Okay. This is D10.

16 Was this a text message -- was this your text
17 message?

18 A Yes.

19 Q With B.?

20 A Yes.

21 Q And she asks if you have to do a year of JV before
22 you could make varsity, and you said say no. She responded
23 that's stupid. Does saying that's stupid about that rule
24 violate any rules?

25 A No.

1 Q Is there anything that I did not ask you about today
2 that you think is important in this case?

3 A I don't believe so.

4 MS. TACK-HOOPER: Okay. I am all set. Do you have
5 anything?

6 MR. BROWN: I do have just a couple of questions.

7 BY MR. BROWN:

8 Q Miss Luchetta, you recall there was a discussion
9 today about what would and what would not be a violation of
10 the negative information provision, the one dealing with the
11 internet?

12 A Yes.

13 Q And you were given a series of hypotheticals of what
14 might be a violation and what isn't a violation. Do you
15 recall that discussion?

16 A Yes.

17 Q The Snap that B. posted that included the fuck cheer
18 statement, did you have any doubt that that was a violation of
19 the negative information provision?

20 A I had no doubt that was definitely a violation.

21 Q Just one. I think this is just clarifying. You
22 were discussing just a few minutes ago that some of the
23 cheerleaders were upset after finding out about B's post. Is
24 that correct?

25 A That's correct.

1 Q You were asked a question if something were
2 lingering, you said there is still anger. I want to clarify.
3 You said there is still anger on the part of whom to whom?

4 A The cheerleaders are still upset.

5 Q They're still upset with B. and the fact that she's
6 on the team after what she did?

7 A Yes.

8 MR. BROWN: Okay. I just wanted to clarify that.
9 That's all that I have.

10

11 BY MS. TACK-HOOPER:

12 Q Just one follow-up question.

13 You said that the Snap was definitely a violation.
14 Did you consider the fact that the Snap didn't mention the
15 school or any person or the district when you were deciding
16 whether it violated the rule?

17 A It was based on the fact that it mentioned
18 cheerleading specifically.

19 Q Okay. Did it matter to you that B. was not wearing
20 her uniform or any school paraphernalia at all?

21 A I feel that since she mentioned cheerleading, that
22 was about the same as wearing your cheerleading uniform.

23 MS. TACK-HOOPER: Okay. Nothing further.

24 MR. BROWN: Actually then, I will have one more, I
25 am afraid.

1 MS. TACK-HOOPER: Sorry.

2
3 BY MR. BROWN:

4 Q Was there ever discussion with B. by you or anyone
5 else at the district that you're aware of as to why she made
6 that post including the phrase fuck cheer?

7 A I believe she spoke with Tom Smith about it. And I
8 -- when I spoke with her mom on the phone, she said it was
9 that she was upset over not making the varsity squad.

10 Q So your understanding was that her statement was
11 related to the Mahanoy cheerleading team, and not just
12 cheerleading in general?

13 A Yes. Yes.

14
15 BY MS. TACK-HOOPER:

16 Q If she had told you that she was watching a
17 cheerleading competition on T.V. and decided she hated
18 cheerleading and that's why she did it, would you have decided
19 differently whether to punish her?

20 A I don't see how that is related.

21 Q What do you mean by that?

22 A I don't understand how someone -- that situation
23 would occur. I feel like that's unrealistic.

24 Q So it was probably an unclear hypothetical. I am
25 sorry.

1 You can imagine how somebody could be a cheerleader
2 in the district and say fuck cheer, but not be talking about
3 her own team, or you think that's impossible?

4 A I feel it's because she was talking about our
5 cheerleading and our team.

6 I haven't considered that situation. That would be
7 -- have to be something that I would have to think about.

8 Q Okay. And my question is if you found out that in
9 fact it wasn't at all about varsity, it was about something
10 unrelated to your team and the district, would that have
11 effected your decision?

12 A I feel like that's inapplicable because we do
13 already know that it is linked to our team.

14 Q Okay. Well, I am asking you a hypothetical. So I
15 understand that you know that it was, she was mad about not
16 making varsity. I am just -- I am trying to understand
17 whether somebody's intent changes whether their speech
18 violates the rule or not?

19 MR. BROWN: I will object to the hypothetical, but
20 you can answer.

21 THE WITNESS: That would be up to discussion for me
22 and the other coaches and the Principal. I honestly don't
23 know what my decision would be before discussing it with them.

24 BY MS. TACK-HOOPER:

25 Q Okay. In general, would you say that you mostly

1 have to discuss a particular situation with other people in
2 order to know whether it violated the rule or not?

3 A Not necessarily. But when you coach with other
4 staff, we would -- I would take their opinions into
5 consideration as well as my own. I would come to a consensus
6 as to what we feel is a violation as to -- and what we don't.

7 Q Okay.

8 A At that time April was my co-advisor. We would
9 discuss it and come to a consensus about it.

10 Q Okay. Have you ever had any disagreement with other
11 people that you have discussed the rules about what the rules
12 mean?

13 A Not at this time. Not to this time, no.

14 MS. TACK-HOOPER: Okay. That's all I have.

15 MR. BROWN: I did not have anything further.

16 (Whereupon, the deposition was concluded at
17 11:00 a.m.)

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COUNTY OF DAUPHIN :

: SS

COMMONWEALTH OF PENNSYLVANIA :

I, Maria N. O'Donnell, a Notary Public, authorized to administer oaths within and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing is the testimony of NICOLE LUCHETTA-RUMP.

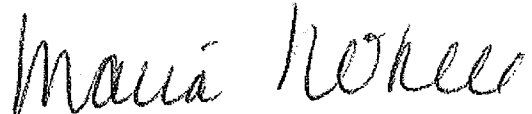
I further certify that before the taking of said deposition, the witness was duly sworn; that the questions and answers were taken down stenographically by the said Reporter-Notary Public, and afterwards reduced to typewriting under the direction of the said Reporter.

I further certify the said deposition was taken at the time and place specified in the caption sheet hereof.

I further certify that I am not a relative or employee or attorney or counsel to any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

I further certify the said deposition constitutes a true record of the testimony given by the said witness.

In WITNESS WHEREOF, I have hereunto set my hand this 18TH day of OCTOBER, 2018.



Maria N. O'Donnell, RPR
Notary Public

1 I have read the foregoing transcript of
2 my deposition given on October 10, 2018, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon
6 and/or list of corrections, if any, attached
7 on a separate sheet herewith.

8
9
10
11
12 _____
13 NICOLE LUCHETTA-RUMP
14
15
16

17 Subscribed and sworn to
18 before me this _____ day
19 of _____, 2018.
20
21

22 _____
23 Notary Public
24
25

Exhibit G

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

B.L., A MINOR, BY AND THROUGH :
HER FATHER, LAWRENCE LEVY, : CIVIL NO. 3:17-CV-1734-ARC
AND HER MOTHER, BETTY LOU :
LEVY, :
PLAINTIFFS :
V :
MAHANoy AREA SCHOOL DISTRICT, :
DEFENDANT :

DEPOSITION OF: APRIL GNALL

TAKEN BY: PLAINTIFFS

BEFORE: MARIA N. O'DONNELL, RPR
NOTARY PUBLIC

DATE: OCTOBER 10, 2018, 11:00 A.M.

PLACE: MAHANoy AREA SCHOOL DISTRICT
ONE GOLDEN BEAR DRIVE
MAHANoy CITY, PENNSYLVANIA

1
2
3
4 APPEARANCES:

5
6 AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA

7 BY: MOLLY TACK-HOOPER, ESQUIRE

8 P.O. BOX 60173

9 PHILADELPHIA, PA 19102

10 215-592-1513

11 MTACK-HOOPER@ACLUPA.ORG

12 FOR - PLAINTIFFS

13
14 LEVIN LEGAL GROUP

15 BY: DAVID W. BURNS, ESQUIRE

16 1800 BYBERRY ROAD

17 HUNTINGDON VALLEY, PA 19006

18 215-938-6378

19 DBROWN@LEVINLEGALGROUP.COM

20 FOR - DEFENDANT

21
22 ALSO PRESENT:

23 LAWRENCE LEVY

24 BETTY LOIU LEVY

25 DR. JOIE GREEN

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WITNESSES

NAME

EXAMINATION

APRIL GNALL

BY: MS. TACK-HOOPER

3

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are hereby waived; and that all objections except as to the form of the question are reserved to the time of trial.

APRIL GNALL, called as a witness, being duly sworn, testified as follows:

EXAMINATION

BY MS. TACK-HOOPER:

Q Could you please state your name for the record?

A April Gnall.

Q Do you go by Mrs. Gnall?

A Yes.

Q Ms.?

A Mrs.

Q Have you ever testified in a deposition before?

A No, I did not.

Q I will just ask you to let me know if you don't understand a question, and I will rephrase it. And if you do answer a question, I will assume that you have understood it. Is that fair?

A Yes.

MS. TACK-HOOPER: Could we go off the record?

(Discussion held off the record.)

1 BY MS. TACK-HOOPER:

2 Q Back on the record.

3 So you have been designated to testify for the
4 district with Ms. Luchetta-Rump on the first topic in P2,
5 which is about the cheerleading rules on page A6.

6 Do you want to take a moment and read topic one, or
7 have you read it recently?

8 A Okay. Okay.

9 Q You read it?

10 A Yes.

11 Q And are you the person most knowledgeable along with
12 Miss Luchetta-Rump about the cheerleading rules?

13 A Yes.

14 MS. TACK-HOOPER: Okay.

15 MR. BROWN: Speak up a little louder for the court
16 reporter.

17 THE WITNESS: Yes. I am sorry.

18 BY MS. TACK-HOOPER:

19 Q Okay. Is there any reason why you cannot give
20 truthful testimony today?

21 A No.

22 Q So you were here during Ms. Luchettas-Rump's
23 testimony. Did you agree with her testimony?

24 A Yes.

25 Q Was there anything that she said that you disagreed

1 with?

2 A No.

3 Q Is there anything that she said that you felt was
4 incomplete?

5 A No.

6 Q Okay. What is your title?

7 A Currently now just third grade teacher.

8 Q Okay. And last year, you were cheerleading advisor
9 of some sort, is that correct?

10 A Yes.

11 Q What was your title?

12 A Co-advisor with Nicole.

13 Q Okay. And at that time, were you paid extra for
14 your work as cheerleading co-advisor?

15 A Yes.

16 Q Okay. How long -- how many years have you spent as
17 a cheerleading coach of some kind?

18 A This time around, three years. And approximately
19 back in '93, '94, I want to say three or four years.

20 Q Okay.

21 A It was a long time ago.

22 Q And how long have you been an educator?

23 A Since 1990.

24 Q Okay. Ms. Luchetta-Rump said that she thought that
25 you were -- would be more knowledgeable than she would about

1 how you learned about the existence of the Snap. So I want to
2 ask you some questions about that.

3 Let's look at P-5, which is the district's responses
4 to interrogatories. If you could look at the answer -- if you
5 could look at the answer to number one.

6 MR. BROWN: It's a couple pages in.

7 BY MS. TACK-HOOPER:

8 Q Yes. Did you have a chance to read the response to
9 one?

10 A Yes. Yes.

11 Q Is that accurate?

12 A Yes.

13 Q Okay. B. says that she created the Snap on
14 Saturday, May 27, 2017 at the Cocoa Hut. Do you have any
15 reason to doubt any of those details?

16 A No.

17 Q Okay. Was the cheerleading season over at that
18 point?

19 A I don't really think our season ever is over because
20 we literally go from tryouts. We roll into practices for the
21 summer. We go into football season. We go into basketball
22 season which goes into wrestling season. We get that slight
23 little break before we start holding practices for tryouts
24 again. So personally I feel like our season is on going.

25 Q Okay. So practices start right after tryouts?

1 A Pretty much for the summer.

2 Q Okay.

3 A And we have the parade. The Memorial Day Parade was
4 right after tryouts. So the girls have to go to the parade as
5 well. That is part of our requirement.

6 Q Are students told whether they made varsity the same
7 day as tryouts?

8 A Yes.

9 Q Okay. I want to talk a little bit about Snapchat.
10 So I am not a Snapchat user, I confess. But my understanding
11 is that unlike other social media platforms where there is a
12 web site that you can go to, Snapchat is just an app. And the
13 essential feature of Snapchat is that the posts are self
14 deleting. Is that consistent with what you understand about
15 Snapchat?

16 A To be honest with you, I don't know enough about
17 Snapchat --

18 Q Okay.

19 A -- to be perfectly honest.

20 Q Okay. So B. testified that this -- the particular
21 Snap at issue in this case had been posted to her story, which
22 meant that the people she was friends with on Snapchat could
23 look at it within 24 hours after she posted it, and after that
24 it disappeared. So my question is, do you know how it came to
25 be preserved longer than that 24-hour period?

1 A I am assuming that you can screen shot from
2 Snapchat. I am --

3 Q But you don't know how the screen shot or photo was
4 were taken, anything like that?

5 A I know DF who was a varsity member shared the
6 information with S.

7 Q Okay. Do you know who brought it to school? I mean
8 B. didn't take a photo and bring it to school. So safe to
9 assume one of the other cheerleaders brought the photo or
10 screen shot to school to show you?

11 A I am in the elementary. I am in my own world over
12 there. What happens over here, Nicole, because she's in high
13 school, generally hears more than I do with being in third
14 grade.

15 Q Okay.

16 A I don't know how it came to school. I just know how
17 I received the information.

18 Q And that was -- how did you receive the information?

19 A I received a phone call from S. stating that D. told
20 her that the Snap was on Snapchat, it was inappropriate. And
21 after the phone hung up, they were sent to me.

22 Q Okay. So what was your understanding at that time
23 of who had seen the Snapchat?

24 A I sort of felt like everyone obviously that was in
25 the friends list. And as you can see, my daughter was not on

1 the friends list and still had the opportunity to see it. So
2 it could have been double the amount of people, I don't know.

3 Q Okay. I am handing you Exhibit D2. Do you know
4 what this is?

5 A It was the second Snap that I received.

6 Q Okay. And where did you receive it?

7 A At home that night.

8 Q From your daughter?

9 A Yes.

10 Q Okay. Do you have any information about how the
11 screen shot or photo was taken?

12 A As far as I know, it was shared with S. and S.
13 forwarded it to me.

14 Q I am honestly not sure that I have any other
15 questions for you.

16 Is there anything -- were there any topics this
17 morning that I asked Miss Luchetta-Rump about that you feel
18 that you were more knowledgeable to speak on that we haven't
19 just covered?

20 A No. As co-advisors, that's what we were. We
21 co-advised. And we --

22 Q Okay.

23 A -- literally discussed everything. So....

24 Q Okay. And you -- I asked her some hypothetical
25 questions to try to understand what the cheerleading rules

1 mean. You agreed with her responses to those hypotheticals?

2 A Yes.

3 MS. TACK-HOOPER: Okay. I have nothing else.

4 MR. BROWN: I do not have anything.

5 (Whereupon, the deposition was concluded at 11:11
6 a.m.)

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COUNTY OF DAUPHIN :
: SS

COMMONWEALTH OF PENNSYLVANIA :

I, Maria N. O'Donnell, a Notary Public, authorized to administer oaths within and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing is the testimony of APRIL GNALL.

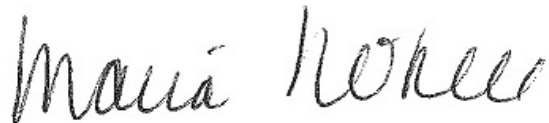
I further certify that before the taking of said deposition, the witness was duly sworn; that the questions and answers were taken down stenographically by the said Reporter-Notary Public, and afterwards reduced to typewriting under the direction of the said Reporter.

I further certify the said deposition was taken at the time and place specified in the caption sheet hereof.

I further certify that I am not a relative or employee or attorney or counsel to any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

I further certify the said deposition constitutes a true record of the testimony given by the said witness.

In WITNESS WHEREOF, I have hereunto set my hand this 18TH day of OCTOBER, 2018.



Maria N. O'Donnell, RPR
Notary Public

1 I have read the foregoing transcript of
2 my deposition given on October 10, 2018, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon
6 and/or list of corrections, if any, attached
7 on a separate sheet herewith.

8
9
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12 _____
13 APRIL GNALL
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17 Subscribed and sworn to
18 before me this ____ day
19 of _____, 2018.
20
21

22 _____
23 Notary Public
24
25

I, APRIL GNALL, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below).

[illegible]

Date APRIL GNALL

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--	--

Exhibit H

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

B.L., A MINOR, BY AND THROUGH :
HER FATHER, LAWRENCE LEVY, : CIVIL NO. 3:17-CV-1734-ARC
AND HER MOTHER, BETTY LOU :
LEVY, :
PLAINTIFFS :
V :
MAHANoy AREA SCHOOL DISTRICT, :
DEFENDANT :

DEPOSITION OF: DR. JOIE GREEN

TAKEN BY: PLAINTIFFS

BEFORE: MARIA N. O'DONNELL, RPR
NOTARY PUBLIC

DATE: OCTOBER 10, 2018, 11:12 A.M.

PLACE: MAHANoy AREA SCHOOL DISTRICT
ONE GOLDEN BEAR DRIVE
MAHANoy CITY, PENNSYLVANIA

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3
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5 APPEARANCES:

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13 FOR - PLAINTIFFS
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15 LEVIN LEGAL GROUP

16 BY: DAVID W. BURNS, ESQUIRE

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21 FOR - DEFENDANT
22

23 ALSO PRESENT:

24 LAWRENCE LEVY

25 BETTY LOIU LEVY

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WITNESSES

NAME	EXAMINATION
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DR. JOIE GREEN

BY MS. TACK-HOOPER	4, 30
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BY: MR. BROWN	29
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EXHIBITS

DEPOSITION EXHIBIT NO.	PRODUCED AND MARKED
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10. Request for Admission	7
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11. Document (Facebook messages)	11
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12-14. Policy manual documents	18
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STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are hereby waived; and that all objections except as to the form of the question are reserved to the time of trial.

JOIE GREEN, called as a witness, being duly sworn, testified as follows:

EXAMINATION

BY MS. TACK-HOOPER:

Q Okay. Have you ever given a deposition before?

A Yes.

Q How many times?

A A lot. I don't know.

Q Were those all in your capacity as superintendent of the school district?

A Yes. Yes.

Q Okay. Do you understand that you have been designated to testify for the district today on several topics?

A Yes.

Q And do you have Exhibit P-2 there?

A Yes.

Q The deposition notice?

You have been designated on topics two, four, six

1 and seven.

2 A Okay.

3 Q Are you the person most knowledgeable to testify
4 about those topics?

5 Feel free to read them.

6 A Yes.

7 Q Is there any reason why you cannot give truthful
8 testimony today?

9 A No.

10 Q What did you do to prepare for this deposition?

11 A I reviewed this -- I reviewed this, what is it?

12 Q Deposition notice?

13 A Yes. Thank you. Thank you. I reviewed the
14 deposition notice yesterday.

15 Q Okay. Did you speak with anyone about your
16 testimony today other than your attorney?

17 A No.

18 Q Okay. What is your title?

19 A I am the superintendent at the school district.

20 Q And what are your job duties?

21 A Are you sure you want to get out of here by lunch
22 time?

23 Q Is there a two-sentence version of describing what
24 you do?

25 A I am just basically responsible for all of the

1 students, staff and tax payer -- well, tax payers of the
2 community. So just probably the main person that is
3 responsible for everything.

4 Q Okay. How many years have you been superintendent
5 of the district?

6 A Superintendent here since 2010. So eight years.

7 Q And what position did you hold previous to that?

8 A I was a middle school principal here from 2004 to
9 2010. And then before that, I was a teacher for about fifteen
10 years.

11 Q Okay. Could you please look at Exhibit P-3, the
12 district's interrogatory responses. They should be somewhere
13 in the stack.

14 A I put them in order for myself.

15 Q Okay.

16 A Okay.

17 MR. BROWN: I think it is P-5.

18 BY MS. TACK-HOOPER:

19 Q I am sorry, it is P-5. My mistake.

20 A Okay.

21 Q You signed a verification at the back of this
22 document, is that correct?

23 A Yes.

24 Q Did you review those responses before they were
25 submitted?

1 A Yes.

2 Q And they're accurate?

3 A Yes.

4 MS. TACK-HOOPER: Okay. Let's mark this P-10.

5 (Defendant's responses to plaintiffs' request for
6 admission produced and marked Deposition Exhibit No. P10.)

7 BY MS. TACK-HOOPER:

8 Q You have in front of you Exhibit P10, the district's
9 responses to plaintiffs' first request for admissions.

10 At the back of this document, you have signed a
11 verification. Did you review this document before it was
12 submitted?

13 A Yes.

14 Q And are the responses in here accurate?

15 A Yes.

16 Q Okay. Were Ms. Luchetta-Rump and Ms. Gnall
17 authorized by the school to remove B. from the cheerleading
18 team as punishment for her Snap?

19 A I wouldn't say authorized by the school district.
20 Normally what happens is the coaches of various co-curricular
21 activities have their own rules that they follow, and it's up
22 to them to determine what is appropriate for their team and
23 what isn't appropriate for their team. So I wouldn't say that
24 the district authorized them to do that. There was no board
25 approval saying that -- a board ratification saying, you know,

1 you have to, you know, remove B., none of that. So it's
2 basically up to the coaches themselves to determine what the
3 appropriate punishments agree with what. That word punishment
4 is for the child that doesn't follow their rules.

5 Q So you were here for Miss Luchetta-Rump's testimony
6 earlier today, right?

7 A Yes.

8 Q We talked about several parts of the handbook that
9 refer to coaches adopting their own rules for their teams.
10 Correct?

11 A Yes.

12 Q Okay. So coaches are allowed to make their own
13 rules for their teams?

14 A Correct.

15 Q Are there any limits on what kind of rules coaches
16 can make for their teams?

17 A Well, they have to follow the PIAA rules, obviously
18 that is required. They have to follow the ineligibility list
19 rules as far as grading. But other than that, they can -- you
20 know, they have guidelines. The guideline would be the
21 student handbook, the PIAA. Then they go from there to make
22 their rules.

23 Q Have you reviewed the cheerleading rules for the
24 district?

25 A Not before this incident. I have never reviewed any

1 rules for any sports before this incident.

2 Q Okay. What is your understanding of who reviewed
3 rule -- who reviewed the cheerleading rules?

4 A When?

5 Q Before they were put into effect.

6 A It's my understanding that the cheerleading coaches
7 put their own rules into effect themselves.

8 Q Okay.

9 A It's not reviewed by the principal unless they have
10 a question about something or something has changed from year
11 to year and they have a question they want to run by the
12 principal, but it is never reviewed with me.

13 Q Okay. Let's look at the cheerleading rules. They
14 are Exhibit D3.

15 Have you had an opportunity to read these rules at
16 some point?

17 A Yes.

18 Q Is there anything in these rules that goes beyond
19 what coaches are allowed to do?

20 A No.

21 Q You heard the coaches testify about what various
22 provisions of these rules mean. Did their explanation of how
23 they apply these rules exceed what they're allowed to do in
24 your opinion?

25 A No.

1 Q Would you say that the coaches had the power to
2 remove B. from the cheerleading team without approval from
3 anyone else?

4 A Yes.

5 Q After B. was punished, her parents had several
6 conversations with district officials asking for
7 reconsideration. Are you aware of this?

8 A Yes.

9 Q The high school principal at the time, Mr. Smith,
10 stood by their decision. Correct?

11 A Yes.

12 Q You stood by their decision, correct?

13 A Yes.

14 Q Athletic Director Cray stood their by their
15 decision?

16 A Yes.

17 Q On June 29th, 2017, Mr. Levy went to the board
18 meeting to discuss this incident. Were you aware of that?

19 A Yes.

20 Q Did the board discuss Brandi's punishment at that
21 meeting?

22 A With Mr. Levy, yes. Her punishment, did you ask?

23 Q Yes.

24 A No. After the meeting was over, he -- they had
25 stated that they were going to take it into consideration.

1 Q Okay. If you look at the interrogatory responses,
2 which are P-5, response No. 3 says that the board took no
3 action on the matter?

4 A Right. The board did not take any action. They did
5 not.

6 MR. BROWN: Did you say that was No. 3?

7 THE WITNESS: She said No. 3.

8 BY MS. TACK-HOOPER:

9 Q Did I get the number wrong? I will find it. Yes,
10 it's at the end of the second paragraph in response to No. 3.
11 The school board took no action on the matter?

12 A Right.

13 Q What does that mean?

14 A They did not have a public meeting about it, a
15 public vote about it. They didn't ratify anything. They
16 didn't -- they just didn't have any -- normally like at a
17 school board meeting, we do motions and approvals, they didn't
18 do that for this situation.

19 MS. TACK-HOOPER: Okay. P-11.

20 (Document, Facebook messages, produced and marked
21 Deposition Exhibit Number P11.)

22 BY MS. TACK-HOOPER:

23 Q You have what's been marked as P11. Is this a
24 Facebook message between you and Mr. Levy?

25 A Yes. Messenger message, yes.

1 Q Okay.

2 A I don't know if it was messaged through Facebook.

3 It might have been a text message. I am not sure.

4 Q Okay. It was some communication with Mr. Levy?

5 A Correct.

6 Q On August 11, correct?

7 A Yes.

8 Q And you state in there that the school board decided
9 to stand by the coaches. Correct?

10 A Yes.

11 Q Was there -- did the board consider the issue of B's
12 punishment a second time after the June 29th meeting?

13 A I don't know -- I was trying to remember what
14 happened. I don't know if they had discussed supporting the
15 coaches that meeting, or if it was the meeting after that, the
16 July meeting, because I don't understand why it took until
17 August 11th to message Larry to tell him that.

18 Q Okay.

19 A I am not sure what happened there. I don't know if
20 there was a discussion about it. I am not sure. But they had
21 told me to notify him and let him know that they were going to
22 support the coaches.

23 Q Okay.

24 A So that's what I did.

25 Q Okay. Was there any kind of formal vote?

1 A No.

2 Q Okay. Is there any reason in your view why the
3 coaches decision to remove B. from the cheerleading squad as
4 punishment for her Snap should not be attributed to the
5 district?

6 A What? I --

7 MR. BROWN: Object to the form.

8 THE WITNESS: I don't understand what you mean.

9 BY MS. TACK-HOOPER:

10 Q Sure. When the coaches decided to punish B., that
11 is something that coaches are allowed to do, correct?

12 A Yes.

13 Q They were acting as coaches in the way that all of
14 your coaches act, correct?

15 A Yes.

16 Q Okay. The rules in the handbook say that they get
17 to set rules regarding students' out of school conduct and can
18 punish students for violating those rules, correct?

19 A Yes.

20 Q The coaches did everything the way that you would
21 expect them to handle the situation?

22 A Yes.

23 Q Okay. They weren't going rogue in this situation?

24 A No.

25 Q Okay. All right. And the district ultimately

1 decided that the punishment was appropriate, correct?

2 MR. BROWN: Objection to the form as far as what you
3 mean by district.

4 BY MS. TACK-HOOPER:

5 Q Okay. The school board ultimately decided that the
6 punishment was appropriate, correct?

7 A The school board decided that they were going to
8 support the coaches' decisions.

9 Q Okay.

10 A They said that they can't -- that they shouldn't get
11 involved in extracurricular activities. That they need -- the
12 coaches need to be able to hold their people accountable for
13 what they do and don't do.

14 Q Sure.

15 A So it shouldn't be a board -- it shouldn't -- it
16 shouldn't be at the board level.

17 Q Right. So coaches should be allowed to make these
18 decisions without having to go through the school board or
19 other administrators, correct?

20 A Coaches should be able to monitor their, I shouldn't
21 say student, but that's what they are, monitor them the way
22 they see fit for their activity.

23 Q Okay. Are there any -- is there any training that
24 coaches receive about the limits of their authority to punish
25 students?

1 A The training that are required for all coaches are
2 through PIAA. And our -- all of our coaches are required to
3 do those trainings. As far as if there is one for discipline,
4 I am not sure.

5 Q Okay. Did -- do school coaches have to notify
6 anyone else at the school or the district either before or
7 after they punish students?

8 A They don't have to put -- we're such a small school,
9 that the majority of them do.

10 Q Okay.

11 A They'll notify the principal or the athletic
12 director.

13 Q Okay. Are you aware of any coaches ever having been
14 reprimanded or disciplined for disciplining students
15 improperly?

16 A Not that I am aware of, no.

17 Q Okay. I'd like to -- we talked this morning about
18 the cheerleading rules that the coaches made and also the
19 student handbook. How do the cheerleading rules relate to the
20 rules in the handbook?

21 A So the handbook has part of the -- all of the PIAA
22 requirements in it. And so they have to kind of -- one is the
23 back hand of the other one. Do you understand what I am
24 saying? So they use both of those to determine what would be
25 the best appropriate rules for their teams. So I know like --

1 that the PIAA part of the handbook has to go across the board
2 for everybody. You know, it's the rule for PIAA. They can't
3 play in a football game if they're averages aren't at a
4 certain point, if they're failing a subject like Nicole had
5 said.

6 Q Right.

7 A So it goes hand in hand. So they have that as a
8 guide to determine what their rules would be.

9 Q Okay. Were there any parts of the handbook that we
10 did not discuss this morning that you think someone should
11 read in order to understand coaches power to punish their
12 players?

13 Feel free to go through the exhibits.

14 A Just that the important part is the -- is page 78
15 through 80, 81 is all of the PIAA information. That's taken
16 right from there. So where it says interscholastic athletic
17 procedures on the bottom of page 78 all of the way through
18 page 81 before the words student counsel, that's everything
19 that explains the suspension from a team, their attendance,
20 their personal conduct, so on. But other than that, no.

21 Q Okay. Just for the record, that was Exhibit P6?

22 A P6, yes.

23 Q Okay. We also looked at another policy, policy 218,
24 which was marked as P-7. Do you -- can you find that one?

25 A Yes.

1 Q What is this policy?

2 A This is a policy for student discipline.

3 Q What is the policy? It says at the top book policy
4 manual. What is the policy manual?

5 A There is a policy manual that is required for all
6 school districts. And each of them -- we do ours through the
7 Pennsylvania School Boards Association. And this is the
8 section 200 of the policy. It is policy 218, which is called
9 student discipline.

10 Q This is the PSEA's standard policy on student
11 discipline?

12 A No. PSBA, Pennsylvania School Board Association.

13 Q I am sorry, PSBA. Sorry.

14 A They recommend a policy to the districts. And then
15 we I guess you could say tweak it to how our district is. And
16 then our board votes on the policies two times in one month,
17 two consecutive months, then it becomes a policy.

18 We send it back to PSBA, then they approve it. And
19 we post it on our web site.

20 Q Okay. And is this a policy that you train
21 cheerleading coaches on?

22 A I don't train. No, I don't train cheerleading
23 coaches on policy, no.

24 Q Do you expect your coaches to be familiar with all
25 of the districts's policies?

1 A That's a tough question because it's two fold. I
2 expect the coaches to follow what is in the handbook as far as
3 what they need to do and what they shouldn't be doing.

4 The policy itself, there is procedures that are made
5 for each policy. So the policy is the big thing, the big
6 picture. Then there is procedures that we can create based on
7 the policy. And those procedures would be the coaches' rules,
8 PIAA procedures, all of those things. So do they follow the
9 policy, they have to realistically -- I shouldn't say they
10 have to, they need to look at the policy and determine what
11 their rules are and procedures are from that point.

12 So once the procedures are established, I would
13 expect them to follow the procedures based on the policy. I
14 hope that makes sense.

15 Q I think so. But I am going to show you some more
16 policies.

17 A Okay.

18 MS. TACK-HOOPER: Twelve, thirteen and fourteen.

19 (Policy manual documents produced and marked
20 Deposition Exhibit Numbers 12, 13, and 14.)

21 BY MS. TACK-HOOPER:

22 Q I have just handed you three more policies, Exhibits
23 P12, P13 and P14. They are policies 122, 123 and 220.

24 Do these policies also constrain the types of rules
25 that coaches are allowed to set?

1 A Constrain?

2 Q Yes. So are these policies that coaches would need
3 to read before writing say their cheerleading rules so that
4 they --

5 A Not necessarily. What I mean yes and no. So if --
6 if the procedures -- if the policy is updated, then yes. But
7 this -- these policies are from 2007, 2012, 2012, and 2007.
8 So the rules and procedures are probably already in effect for
9 these things. So, for example, cheerleading, like we saw, had
10 rules from back in the stone age, and then they moved up. So
11 as the policies were changed, they basically went off of -- as
12 the rules were changed, it was based on most likely the
13 policies. So -- or their procedures might have changed
14 because of something that happened. Like, for example, Nicole
15 had said that the one rule had changed because there was no --
16 there was no Snapchat back then. You know, so they had to add
17 some type of thing. So things change as they move forward.

18 Q Sure.

19 A Basically are they supposed to follow the policy?
20 Yes. But also they need to up -- like these policies I can
21 tell you currently right now are being updated. So we're in
22 the process right now of updating every single one of our
23 policies with PSBA. So it's kind of a hard question to
24 answer.

25 Q Let me ask it this way. Are the cheerleading rules

1 consistent with all of these policies in your view?

2 A I don't know. I didn't really sit down and go
3 through to make sure that they are.

4 Q Okay. Do you want to take a moment and look at
5 these -- these are four policies that your lawyer has produced
6 in this litigation. Are they policies that you're familiar
7 with?

8 A Yes.

9 Q Okay. Do you want to take a few minutes and just
10 look at them again?

11 A Yes, if you don't mind.

12 Q Please take your time.

13 A Could you read me your question again?

14 Q Sure. In your view, are the cheerleading rules
15 consistent with these district policies?

16 A I would say yes.

17 Q Okay. So you agree that coaches have the power to
18 remove students from sports or extra-curriculars because of
19 their out-of-school speech?

20 A Depending on the situation.

21 Q What does that mean?

22 A Depending on what the issue is. If -- what is their
23 out-of-school speech? If it's related, directly related to
24 the school district, harms the school, harms any kind of
25 verbal written or something that is going to hurt the school

1 district, then yes; if it's not, then no.

2 Q Okay. So would coaches have the power to adopt a
3 rule that says that you can't swear outside of school because
4 swearing reflects badly on the district?

5 A That's a tough one too. I think that if they said
6 -- they were swearing against the organization and that was in
7 their rules, then that would be an issue. But if they were
8 just swearing, I don't think that's an issue. It's an
9 individual case basis.

10 Q Okay.

11 A You know, just like the SG thing was different than
12 B's. You know, one did something wrong on social media. We
13 addressed it. That punishment was different. B. did
14 something wrong on social media, that punishment was
15 different. So like it depends on the situation itself.

16 Q Okay.

17 A And based on what they have in their rules.

18 Q Okay. But there is nothing about B's punishment
19 that you think went too far and went beyond what coaches
20 should be allowed to do, is that right?

21 A Do you mean -- well, if -- no. I think that is
22 right.

23 Q Okay. We talked a lot about -- this morning about
24 the nature of Snapchat and the fact that it is different from
25 other social media platforms. In many ways it shares many

1 qualities with say like a large group text. In your view,
2 your coaches have the power to say you can't say disparaging
3 things about the school or about our sport to a large group of
4 people, even if it is not public on line?

5 MR. BROWN: I object to the form. But if you
6 understand the question, you can answer.

7 THE WITNESS: If it's public on line, and it is a
8 derogatory remark towards their team and that is a rule of
9 theirs, then yes, they have the option to discipline them.

10 BY MS. TACK-HOOPER:

11 Q Okay. I am talking about a situation that's not
12 public on line. It's a closed group of some sort, either a
13 closed social media group or like a large group chat.

14 A If they find out about it, they have the right to
15 discipline the child. If they find out that it is in fact a
16 post, because obviously it wasn't private because everybody
17 else found out about it.

18 Q Okay. So in your view, coaches have the power to
19 punish speech that comes into the school in some way even if
20 it wasn't like open to everyone in the public, is that your
21 view?

22 A No. I am saying if -- if the speech effects the --
23 that specific team or group, then yes. An if it's their rule,
24 then yes.

25 Q Right.

1 A They have the right to punish those children.

2 Q Okay. So someone could say something outside of
3 school to one other person that could effect a team. You
4 agree with that, right?

5 A Uh-huh.

6 Q And that one other person they sent it to could tell
7 fifty other people, right?

8 A Uh-huh.

9 Q I am trying to figure out if that is something that
10 you think that the school could punish, or if there is some
11 kind of line drawn that the district does --

12 A I look at it, my own personal view is if you are
13 talking -- if I am talking to you by myself and I am saying to
14 you cheerleading sucks, it's different than posting it on a
15 public forum for everyone to see to get all of the
16 cheerleaders worked up and upset. It happened both times. So
17 like you need to discipline that person because it effected
18 the team itself. If it didn't effect the team, or if it was
19 just a conversation between you and I and no one else knew
20 about it and I was mad at you one day and went up to the coach
21 and said, hey, did you know that so and so said this to me,
22 there is really nothing that you can do about that. To me
23 there is a difference between freedom and speech and throwing
24 a public -- out into a public forum of bashing of your group
25 when you know that that is a rule that you're not able to do.

1 Q Understood. I am trying to understand though if you
2 think your coaches would be allowed to adopt a rule that says
3 if you say to one person outside of school something negative
4 about our sport and I hear about it, I am going to punish you.
5 Would that be allowed?

6 A I don't know how to answer that.

7 Q Okay. Okay. Has the student handbook changed in
8 the past few years in any way that is relevant to this case?

9 A I don't believe so.

10 Q Okay. Okay. One of your attorneys said at the
11 preliminary injunction hearing that it's pretty much the same
12 from year to year. Is that an accurate statement in your
13 view?

14 A Yes. If a policy updates or procedures update, then
15 they're put in there. But the majority of it is the same.

16 Q Okay. What is the most specific written statement
17 that the district has that says that cheerleaders can be
18 punished for saying fuck cheer off campus?

19 A What is the most specific statement?

20 Q Yes. So we have looked at a lot of policies, parts
21 of the handbook that talked generally about personal conduct
22 outside of school, I am just wondering --

23 A There is no one specific answer to that. There is
24 the -- there is a lot of things that would say a cheerleading
25 coach could punish for speech that's outside based on the

1 rules in the handbook, based on the rules that they establish,
2 based on the procedures that they establish from the policies,
3 all of that gives them that authority to do that.

4 Q Okay. Do other sports teams have rules like the
5 cheerleading rules that restrict athletes' speech when they're
6 not at school or doing school activities?

7 A I wouldn't know that, because they don't get their
8 rules approved by me. I do know that some of the sports
9 though have those types of things. But as far as all of them,
10 I don't know.

11 Q Okay. Let's look at P-2, the 30 (b)(6) deposition
12 notice with the topics. So the second topic, it's on page A7,
13 is one that you were designated on.

14 A Okay.

15 Q Subsection A says whether students participating in
16 other high school athletics through the district are subject
17 to restrictions on their out-of-school speech similar to the
18 restrictions on speech imposed on cheerleaders, and if not,
19 why not. Is that a topic you are able to speak about?

20 A I can tell you that they -- whether students
21 participate -- I can tell you that if the coach has that rule,
22 they will put -- implement that rule.

23 There has not been an issue like this until now. So
24 I don't know of any that have an issue with disciplining the
25 students for speech.

1 Q Is there anyone in the district who would be more
2 familiar with these rules? Like I think that you mentioned
3 that coaches sometimes will show their rules to the athletic
4 director or the principal.

5 A I can -- maybe the principal that was here prior to
6 this, Mr. Smith, but I don't think he's going to be able to
7 help you. Because the only time they would go to them for the
8 rules would be if there was a situation where they needed to
9 throw somebody off a team.

10 Q Okay. All right. And the topic B under two on that
11 same document --

12 A Yes.

13 Q Whether HB, a football player, featured in the Utube
14 video at issue is Loy versus Mahanoy Area School District was
15 subjected to discipline as a result of his out-of-school
16 speech, and if not, why not. Is that something that you're
17 able to talk about?

18 A Yes.

19 Q Okay.

20 A So HB was not a football player when the Utube video
21 for Loy and the Mahanoy Area School District was going on. He
22 wasn't on the team. So he wasn't subjected to discipline.

23 Q Is that because it wasn't football season, or he
24 hadn't made the team?

25 A It says was he featured in Utube video and was

1 subjected to discipline, he wasn't.

2 Q No. I am sorry. You said he wasn't a football
3 player. I am asking you if that's because -- so the video, as
4 I understand it from the other lawsuit, was dated February 7,
5 2017. Is that part of the football season?

6 MR. BROWN: Wait. If you can, I think what you are
7 asking, I am just trying to mediate here.

8 MS. TACK-HOOPER: Please, yes.

9 MR. BROWN: You are asking whether it was -- he was a
10 football player, but it was out of season, or was he already
11 off of the football team, is that --

12 MS. TACK-HOOPER: Yes, that's right.

13 THE WITNESS: No. He played football his freshman
14 year for approximately a couple -- maybe a couple weeks and
15 quit.

16 BY MS. TACK-HOOPER:

17 Q I see. Okay.

18 A He never went back out again. And he's a senior
19 this year. So he wasn't even on the football team at all
20 during this lawsuit.

21 Q Okay. Okay.

22 A So it's like it's --

23 MR. BROWN: I think we're saying --

24 MS. TACK-HOOPER: Sure.

25 MR. BROWN: -- it wasn't because it was out of

1 season, he was not on the team any more?

2 THE WITNESS: No. He was not on the team. He was
3 on the team for a few weeks and quit.

4 MS. TACK-HOOPER: Got it.

5 THE WITNESS: Then never went back on the team
6 again.

7 MR. BROWN: The video occurred after.

8 THE WITNESS: Right. The video occurred --

9 BY MS. TACK-HOOPER:

10 Q Are you aware of any -- so I know that you said that
11 you're not familiar with every teams rules. Do you have any
12 reason to believe that any other team has rules that would
13 allow the team to kick a student off for their out-of-school
14 speech?

15 A Do I have any knowledge of that, no.

16 Q Yes. Okay.

17 Okay. Would there be any reason for cheerleaders to
18 be subject to more restrictions on their out-of-school speech
19 than students in other sports?

20 A No.

21 Q Okay. Okay. You were also designated to speak for
22 the district on topic four, which is about past incidents of
23 disruption caused by out-of-school speech. Is that a topic
24 that you are able to speak about?

25 A Yes.

1 Q Okay. Were there any past incidents of disruption
2 that would lead someone to believe that B's Snap might disrupt
3 classroom instruction or other school activities?

4 A You lost me. Can you say that again?

5 Q Sure. Sure.

6 A I am trying to follow what you are saying.

7 Q What other incidents are you aware of involving
8 disruption caused by a student's out-of-school speech?

9 A None.

10 Q None in the district?

11 A No.

12 MS. TACK-HOOPER: Okay. That is all I have.

13 Do you have anything?

14 BY MR. BROWN:

15 Q I just have one question.

16 We have been discussing the authority to remove B.
17 from the cheerleading team. Do you believe there is a
18 difference in removing a student from an extracurricular
19 activity, whether it's the sport of cheerleading versus
20 removing a student from their classes by suspension or
21 expulsion?

22 A Yes. Absolutely. We don't -- that's a part of the
23 reason why the -- we separate the extracurricular from the
24 academic. So we didn't punish B., say you are suspended from
25 school for, you know, ten days for posting this on Facebook.

1 It would be completely up to the coach to determine what they
2 wanted to do based on what was stated. So yes, there is a
3 difference between suspending for extracurricular activities
4 and suspended for academic activities.

5 MR. BROWN: Okay. That's all I have.

6 BY MS. TACK-HOOPER:

7 Q One follow-up.

8 A Okay.

9 Q In the lawsuit, one of the allegations in the
10 complaint was that you had told someone that you couldn't
11 punish the student involved in making the Utube video because
12 of some case law that says that you can't punish -- you can't
13 expel or suspend students for their out-of-school speech. Was
14 that accurate?

15 A No, it wasn't.

16 Q Okay. So you did not make those comments to anyone?

17 A No. It was out of context.

18 Q What was the context?

19 A The context was -- I think this is a confidential
20 case, I am not supposed to speak about.

21 MR. BROWN: You said that you didn't make the
22 comment?

23 THE WITNESS: This case was closed. And I was told
24 I am not allowed to speak about it.

25 BY MS. TACK-HOOPER:

1 Q Sure. I am going to -- let's put that outside of
2 that context. Let me just ask you about -- since your lawyer
3 asked you about the difference between what you can punish
4 students for when you are expelling or suspending them versus
5 what you can punish them for extracurriculars. All I want to
6 know is, is it your view that you cannot punish students --
7 you cannot suspend or expel students for out-of-school speech?

8 A No.

9 Q Is that your -- that's not your understanding?

10 A No.

11 Q Okay. In what circumstances do you think that you
12 can suspend or expel a student for speech?

13 A I wouldn't say suspend or expel a student. I would
14 say from their extracurricular activity, they could be
15 suspended or expelled, but not from the school.

16 Q Okay.

17 A I hope I am not making you confused.

18 Q No. I was just trying to understand what your view
19 was of the difference between those two things.

20 So you're a -- just to make sure I understand it.
21 Your view is that the district can remove students from sports
22 or extracurriculars for speech or conduct that the school
23 would not be able to suspend or expel them from school for, is
24 that right?

25 A Right. Right. Well, it would -- I don't know how

1 to answer that. It would depend on the situation. We would
2 obviously look at if the person stated something that was
3 derogatory toward their athletic group.

4 Q Right.

5 A The athletic gets involved in that. If a person
6 posts, which happens all of the time, people post things on
7 Facebook that are, you know, wrong toward a teacher or
8 something like that --

9 Q Okay.

10 A -- we would follow what the law is, the procedure
11 is, contact the solicitor and find out what do we need to do
12 in this type of situation.

13 Q Okay.

14 A We have not had that situation other than the Loy
15 case which was blown out of proportion and dropped. So I
16 can't --

17 MR. BROWN: Yes.

18 MS. TACK-HOOPER: Fine. Yes.

19 MR. BROWN: We don't need to discuss the Loy case any
20 more.

21 THE WITNESS: That's what I am saying, this is a
22 unique situation for our district.

23 MS. TACK-HOOPER: Okay. I have no other questions.

24 MR. BROWN: I do not either. Thank you very much.

25 (Whereupon, the deposition was concluded at

1 12:00 p.m.)

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COUNTY OF DAUPHIN :
: SS

COMMONWEALTH OF PENNSYLVANIA :

I, Maria N. O'Donnell, a Notary Public, authorized to administer oaths within and for the Commonwealth of Pennsylvania, do hereby certify that the foregoing is the testimony of DR. JOIE GREEN.

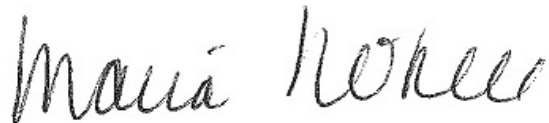
I further certify that before the taking of said deposition, the witness was duly sworn; that the questions and answers were taken down stenographically by the said Reporter-Notary Public, and afterwards reduced to typewriting under the direction of the said Reporter.

I further certify the said deposition was taken at the time and place specified in the caption sheet hereof.

I further certify that I am not a relative or employee or attorney or counsel to any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

I further certify the said deposition constitutes a true record of the testimony given by the said witness.

In WITNESS WHEREOF, I have hereunto set my hand this 18TH day of OCTOBER, 2018.



Maria N. O'Donnell, RPR
Notary Public

1 I have read the foregoing transcript of
2 my deposition given on October 10, 2018, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon
6 and/or list of corrections, if any, attached
7 on a separate sheet herewith.

8
9
10
11
12 _____
13 DR. JOIE GREEN
14
15
16

17 Subscribed and sworn to
18 before me this ____ day
19 of _____, 2018.
20
21

22 _____
23 Notary Public
24
25

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Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

B.L., a minor, by *
her father, *

LAWRENCE LEVY, * Case No.
and her mother, * 3:17-CV-1734
BETTY LOU LEVY, *

Plaintiffs *

vs. *

MAHANoy AREA *

SCHOOL DISTRICT, *

Defendant *

* * * * *

DEPOSITION OF
B.L.
October 24, 2018

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prohibited without authorization by
the certifying agency.

DEPOSITION

OF

B.L., taken on behalf of the Defendant herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Samantha Bruer, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at Mahanoy Area School District, One Golden Bear Drive, Mahanoy City, Pennsylvania, on Wednesday, October 24, 2018 beginning at 9:16 a.m.

A P P E A R A N C E S

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ALSO PRESENT:

DR. JOI L. GREEN, SUPERINTENDENT

I N D E X

WITNESS: B.L.

EXAMINATION

By Attorney Levin 7 - 95

DISCUSSION AMONG PARTIES 95 - 96

CERTIFICATE 97

EXHIBIT PAGE

		PAGE
<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
<u>Defendant's Exhibits:</u>		
1	Snapchat Picture	15
3	Cheerleading Rules	50
4	Student Handbook Page	47
11	Complaint	83

OBJECTION PAGEATTORNEYPAGE

Hel f e r	4 8 ,	4 9 ,	5 4 ,	5 5 ,	5 7 ,	5 8 ,
	5 8 ,	5 9 ,	5 9 ,	6 2 ,	6 2 ,	6 4 ,
	6 4 ,	6 5 ,	6 7 ,	7 0 ,	7 3 ,	7 9 ,
	8 5 ,	8 6 ,	8 7 ,	9 0 ,	9 0 ,	9 0 ,
			9 1 ,	9 2 ,	9 2 ,	9 3

S T I P U L A T I O N

(It is hereby stipulated and agreed by
and between counsel for the respective
parties that reading, signing,
sealing, certification and filing are
not waived.)

P R O C E E D I N G S

B.L.,
CALLED AS A WITNESS IN THE FOLLOWING
PROCEEDING, AND HAVING FIRST BEEN DULY
SWORN, TESTIFIED AND SAID AS FOLLOWS:

EXAMINATION

BY ATTORNEY LEVIN:

Q. You're going to learn a lot
from this case. This is called a
deposition.

Have you ever given a
deposition before?

A. No.

Q. Okay.

1 One of the things that you're
2 going to learn is you have to give
3 verbal responses. So if you nod your
4 head yes or no, I'm going to remind
5 you to say yes or no, which may be
6 appropriate.

7 Is that okay with you?

8 A. Yes.

9 Q. Another thing you'll learn is
10 that utterances like uh-huh and uh-uh,
11 don't go well in the transcript. So
12 if you make such utterances like we
13 all do, I'll remind you to say yes or
14 no.

15 Is that okay?

16 A. Yeah.

17 Q. And thirdly, only one person
18 should be talking at a time so the
19 court reporter can take down
20 everything they say. So please be
21 patient. Wait for me to finish my
22 question before you give your next
23 --- your answer. And I'll be patient
24 and wait for you to finish your answer
25 before I ask my next question.

1 A. A.J.

2 Q. And how does he spell that?

3 A. Like his full name?

4 Q. Yeah.

5 A. His full name is (spells name).

6 Q. And your sister's name is?

7 A. Courtney Levy.

8 Q. And how old is A.J.?

9 A. Thirteen (13).

10 Q. And how old is Courtney?

11 A. Twenty-two (22), I think.

12 Q. And does A.J. go to school?

13 A. Yes.

14 Q. Where?

15 A. Mahanoy.

16 Q. And is he in elementary?

17 A. Middle school.

18 Q. Middle school.

19 A. Or like the high school.

20 He's in eighth grade.

21 Q. And Courtney I assume,

22 graduated?

23 A. Yes.

24 Q. I represent the Mahanoy Area

25 School District in this case. That

11

1 means the school district's my client.

2 If you don't hear any questions
3 I ask, let me know and I'll be happy
4 to repeat it. If you don't understand
5 a question, let me know that and I'll
6 be happy to rephrase it. If you
7 answer a question, I'll assume that
8 you both heard it and that you
9 understood it.

10 Okay?

11 A. Okay.

12 Q. The --- we're not here to make
13 you feel uncomfortable in any way so
14 if you just want to take a break for
15 any reason at all, let us know that.
16 And we'll be happy to take a break.

17 And I understand from your
18 Counsel, that you have to leave today
19 at 10:30.

20 Is that correct?

21 A. Yes.

22 Q. And why do you have to leave?

23 A. I have cross country districts.
24 And we have to eat lunch at 10:30.

25 Q. Okay.

1 Now, you testified at the
2 preliminary adjunction hearing about a
3 year ago, a little bit more than a
4 year ago.

5 Do you remember that?

6 A. Yes.

7 Q. And if I recall correctly, you
8 testified that you had two
9 extracurricular activities,
10 cheerleading and softball.

11 Do you still play softball?

12 A. No.

13 Q. When did you stop softball?

14 A. About maybe, two, three years
15 ago.

16 Q. So you didn't try out for the
17 softball team in, I think the --- for
18 the Spring of 2017?

19 A. I don't remember.

20 Q. Well, this school year is the
21 2018-2019 school year.

22 Right?

23 A. We're in now.

24 Q. Excuse me.

25 A. So then no, I didn't.

1 Q. What grade are you in this
2 year?

3 A. Eleventh (11th).

4 Q. So in the 2017-18 school year,
5 you were in tenth.

6 Right?

7 A. Yes.

8 Q. Okay.

9 When does softball play? When
10 is their season?

11 A. It'll like, start around
12 June-ish. Like the practices will be
13 in June.

14 Q. And when are the games?

15 A. They would be in like July,
16 August.

17 Q. So the high school softball
18 team plays during the summer when
19 school is not in session.

20 Is that correct?

21 A. I wasn't on the high school
22 softball team.

23 Q. Were you on the junior middle
24 school softball team?

25 A. No.

1 I was on the one downtown.

2 Q. So the softball team to which
3 you referred in your testimony, that
4 is not a school district softball
5 team.

6 Is that correct?

7 A. Yes.

8 Q. And when you say in town, was
9 it sponsored by Mahanoy City or by an
10 organization in Mahanoy City?

11 Do you know?

12 A. I'm not sure.

13 Q. When is the last time that you
14 played softball for that team?

15 A. I don't remember.

16 Q. Was it when you were in ninth
17 grade? When you were in eighth grade?
18 Can you help us understand when you
19 last played?

20 A. I --- I really don't remember.

21 Q. The Snap --- in front of you is
22 a three ring binder. It has what we
23 call exhibits. Each exhibit is
24 separated by a tab. And Exhibit D-1,
25 that's the Snap that brings us all

1 together this morning; right?

2 Is that correct?

3 ---

4 (Whereupon, Defendant
5 Exhibit 1, Snapchat
6 Picture, was marked for
7 identification.)

8 ---

9 THE WITNESS:

10 Yes.

11 BY ATTORNEY LEVIN:

12 Q. Okay.

13 And that's you in the glasses.
14 You're --- you --- not in the glasses.
15 I can't ---.

16 A. I'm not in the glasses.

17 Q. Not in glasses.

18 And in that Snap it says among
19 other things, quote, fuck softball,
20 end of quote.

21 Do you see that?

22 A. Yes.

23 Q. Okay.

24 Now this Snap you took and sent
25 in May of 2017.

1 Right?

2 A. Yes.

3 Q. So you were in ninth grade.

4 Right?

5 A. I think, yeah.

6 Q. Okay.

7 And did you try out for
8 softball when you were in ninth grade
9 before this Snap was taken?

10 A. I don't know.

11 I don't remember.

12 Q. Why did you say, quote, fuck
13 softball, end of quote, in this Snap?

14 Do you remember?

15 A. No, I don't remember.

16 Q. Okay.

17 Do you have any physical or
18 mental impairment that would prevent
19 you from hearing any questions that
20 I'm asking?

21 A. No.

22 Q. Do you have any physical or
23 mental impairment that would prevent
24 you from understanding any questions I
25 ask?

1 A. No.

2 Q. Do you have any physical or
3 mental impression that would prevent
4 you from giving truthful answers?

5 A. No.

6 Q. Are you taking any medication
7 that would prevent you from hearing or
8 understanding any questions?

9 A. No.

10 Q. Are you taking any medications
11 that would prevent you from giving
12 truthful answers?

13 A. No.

14 Q. What's your date of birth?

15 A. [REDACTED].

16 Q. Did you look at any documents
17 in order to prepare for your
18 deposition today?

19 A. No.

20 Q. Other than your lawyer, did you
21 talk to anyone to prepare for this
22 deposition today?

23 A. No.

24 Q. Have you ever been suspended or
25 expelled from school?

1 A. No.

2 Q. Have you ever been disciplined
3 in school, like detention or something
4 less than suspension or expulsion?

5 A. Yes.

6 Q. And how many times?

7 A. Two, I think.

8 Q. And what kind of discipline was
9 imposed?

10 A. It was detentions.

11 Q. And what grade were you in when
12 you had the detentions?

13 A. The first one was in ninth
14 grade I think, and then the second one
15 was in tenth.

16 Q. And what were you given
17 detention for in ninth grade?

18 A. For being on my phone.

19 Q. During school?

20 A. Yeah.

21 Q. Okay.

22 And who imposed the detention?

23 A. Mrs. Pollack.

24 Q. How do you spell her name?

25 A. P-O-L-L-A-C-K.

1 Q. And is she a teacher?

2 A. Yes.

3 Q. And what kind of detention did
4 she impose?

5 A. What do you mean?

6 Q. What did you have to do for
7 detention?

8 A. Oh, we just like --- like we
9 brought our own work, that like, we
10 had to do.

11 Q. And did you have to come in at
12 a different time?

13 A. After school.

14 Q. Okay.

15 So it was an after school
16 detention.

17 Approximately how long did you
18 have to serve in detention for that?

19 A. I was there for --- from 2:30
20 to 4:30-ish.

21 Q. And in tenth grade, what were
22 you given detention for?

23 A. Plagiarism.

24 Q. And what class did you engage
25 in a plagiarism?

1 A. Mrs. Pollack.

2 Q. Same teacher?

3 A. Yes.

4 Q. And what does she teach?

5 A. I don't know what the name of
6 her class was. I think it was social
7 studies.

8 Q. Okay.

9 And what type of detention?
10 Was it the same thing after school
11 detention?

12 A. Yes.

13 Q. Same couple of hours?

14 A. Yes.

15 Q. And what did you have to do in
16 the detention that you served for
17 tenth grade?

18 A. We just brought our own work
19 and did it there.

20 Q. And the cross country team,
21 when did you start being in cross
22 country?

23 A. At the beginning of the school
24 year.

25 Q. This school year?

1 A. Yes.

2 Q. So in 11th grade?

3 A. Yes.

4 Q. Is that a varsity or junior
5 varsity that you're on?

6 A. Varsity.

7 Q. And is --- some school
8 districts separate them by the boys
9 cross country and girls cross country.
10 Does the school district do
11 that?

12 A. Yes.

13 Q. And so you are on girls cross
14 country varsity.

15 Is that correct?

16 A. Yes.

17 Q. And what do you run? Is there
18 a specific race like in track and
19 field?

20 A. Meets and invitationals.

21 Q. And this cross country team is
22 sponsored by the school district?

23 A. Yes.

24 Q. And where are you going at
25 approximately 10:30 this morning?

1 Where's it being held?

2 A. Bethlehem.

3 Q. And is that a regional event or
4 are you just competing against one
5 other school district?

6 A. It's regional.

7 Q. Do they have things like
8 starters and substitutes on cross
9 country or does everybody run every
10 race? How's that work?

11 A. Everybody runs every race until
12 you get to like leagues.

13 Q. Okay.

14 And what races do you
15 anticipate are going to be held today?

16 A. It's going to be like boys and
17 girls varsity races.

18 Q. Was --- is it a course?

19 A. Yes.

20 Q. And how long is the course?

21 A. Three miles.

22 Q. And so it's just one race,
23 three-mile race?

24 A. Yes.

25 Q. And how many girls are on the

1 varsity team?

2 A. There's seven of us, I think.

3 Q. And how many boys are on the
4 boys varsity team? Do you know?

5 A. I don't know.

6 Q. Do you ever have any combined
7 meets with the boys, other than what
8 you described today?

9 A. Boys run at like --- like, five
10 minutes before the girls do. So we
11 don't run together.

12 Q. So the same course. Boys leave
13 early and the girls ---

14 A. Yes.

15 Q. --- leave five minutes later?

16 A. Yes.

17 Q. Okay.

18 Do you travel on the same bus
19 together?

20 A. Yes.

21 Q. Are there any other
22 extracurricular activities that you
23 take part in other than cheerleading
24 and cross country this year?

25 A. No.

1 Q. Are there any other
2 extracurricular activities that you
3 took part in last year when you were
4 in tenth grade, other than
5 cheerleading?

6 A. I don't think so.

7 Q. You testified that you were in
8 Honor Society.

9 Are you in Honor Society still?

10 A. Not National Honor Society.

11 I was in National Junior Honor
12 Society in middle school.

13 Q. And when did you get accepted
14 to National Junior Honor Society?

15 A. I think it was seventh grade.

16 Q. And do you know what you had to
17 do to get on National Junior Honor
18 Society?

19 A. I think you had to have a
20 certain, like average, a certain grade
21 point average.

22 Q. Is that all?

23 A. Yes.

24 Q. Okay.

25 And do you know what that grade

1 point average was in seventh grade
2 that you had to have?

3 A. I don't remember.

4 Q. Do you remember whether they
5 looked at your sixth grade --- your
6 sixth grade grades and marks to
7 determine whether you qualified in
8 seventh grade or did they look at
9 seventh grade marks?

10 A. I think it was maybe your sixth
11 grade --- I'm not sure.

12 Q. And what did you have to do, if
13 anything, to be in National Junior
14 Honor Society?

15 A. I'm pretty sure you had to do
16 community service hours.

17 Q. And did you do community
18 service hours?

19 A. Yes.

20 Q. And what did you do with
21 community service in?

22 A. I worked BINGO for a firehouse.

23 Q. I didn't hear that.

24 BINGO for a firehouse did you
25 say?

1 A. Yeah.

2 Q. Okay.

3 And which firehouse?

4 A. The West End.

5 Q. And how many hours did you have
6 to do community service?

7 A. I think it was six.

8 Q. And did you do those six hours
9 when you were in seventh grade?

10 A. Yes.

11 Q. Did you do anything in eighth
12 grade for National Junior Honor
13 Society?

14 A. I think you had to do the
15 community service hours again.

16 Q. Were you in National Junior
17 Honor Society in eighth grade?

18 A. Yes.

19 Q. And was that based, to your
20 knowledge, on your grades from seventh
21 grade?

22 A. I would assume.

23 Q. And in eighth grade, did you
24 have to do anything more in order to
25 get into National Junior Honor Society

1 other than have certain grades?

2 A. No.

3 I think once you made it, you
4 had to do community service again.

5 Q. Okay.

6 And how about ninth grade?
7 Same thing?

8 A. Ninth and tenth grade we didn't
9 have, like a society.

10 Q. All right. So ---?

11 A. Eleventh (11th) and 12th grade
12 was National Honor Society.

13 Q. So seventh and eighth grade you
14 were in National Junior Honor Society.
15 Ninth and tenth grade there was no
16 Junior Honor Society or National Honor
17 Society.

18 Is that correct?

19 A. Yes.

20 Q. And 11th and 12th grade, there
21 is National Honor Society?

22 A. Yes.

23 Q. Are you in National Honor
24 Society now that you're in 11th grade?

25 A. No.

1 Q. Why not?

2 A. I don't know. They don't tell
3 us why.

4 Q. Okay.

5 Do you know what the conditions
6 are in order to get into National
7 Honor Society?

8 A. No.

9 Q. How are your grades this year?

10 A. They're good.

11 Q. And what are your major
12 subjects?

13 You're looking at me like I
14 don't know what I'm talking about. So
15 let me explain.

16 When I was a kid long ago, they
17 had major subjects and minor subjects.
18 Gym and health were considered minor,
19 for example. History, English,
20 Science, were considered majors. And
21 the major subjects, you went to every
22 day of the week.

23 So the way you're looking at
24 me, it sounds like they don't do
25 majors and minors anymore?

1 A. No.

2 We have the same classes out,
3 like all week.

4 Q. Okay.

5 A. All year around.

6 Q. And what are your classes this
7 year? What are your subjects?

8 A. History, accounting, chemistry,
9 Spanish III, Honors English, algebra
10 III and the YES program.

11 Q. The what, program?

12 A. The YES program.

13 Q. And what's the YES program?

14 A. I'm not sure.

15 We had to take it this year.

16 Q. Did it start yet?

17 A. Yes.

18 It started at the beginning of
19 the year.

20 Q. Well, why aren't you sure what
21 the YES program is if it started?

22 A. I think we just, like, look at
23 careers and stuff. And then, like it
24 gets us ready for our senior year of
25 high school.

1 Q. Okay.

2 It's still early in the school
3 year. Have you gotten a report card
4 yet?

5 A. No.

6 Q. Probably early in November or
7 so? The first report period?

8 A. The marking period ends on
9 Tuesday.

10 Q. Okay.

11 And then what is it, a week or
12 two later you'll get your report
13 cards?

14 A. I think we get it that week.

15 Q. Okay.

16 What do you think you're going
17 to get in history?

18 A. Like high 90's.

19 Q. Is that an A? Or don't they do
20 A, B, C or D?

21 A. They don't do A, B, C.

22 Q. Accounting, what do you think
23 you're going to get?

24 A. High 90's.

25 Q. Chemistry, what do you think

1 you're going to get?

2 A. Low 90's.

3 Q. Spanish, what do you think
4 you're going to get?

5 A. High 90's.

6 Q. Honors English, what do you
7 think you're going to get?

8 A. High 80's.

9 Q. Algebra, what do you think
10 you're going to get?

11 A. High 80's.

12 Q. And do they even give you a
13 grade for YES program?

14 A. Yeah.

15 Q. And what do you think you'll
16 get there?

17 A. High 90's.

18 Q. Okay.

19 Last year when you were in
20 tenth grade, what subjects did you
21 take in tenth grade?

22 A. I don't ---. It was math,
23 English, history, intro to accounting.

24 Q. I didn't hear that?

25 A. Intro to accounting.

1 Q. Okay.

2 A. Biology, computer apps and gym
3 --- and Spanish. I think that's what
4 I had.

5 Q. And what was your grade, your
6 final grade in Spanish, do you
7 remember?

8 A. I don't remember. It was like
9 high 90's. I don't know the
10 exact ---.

11 Q. Math, what was your final
12 grade?

13 A. Low 90's maybe.

14 Q. English, what was your final
15 grade?

16 A. I don't know.

17 Q. History, what was your final
18 grade?

19 A. Maybe low 90's.

20 Q. Intro to accounting, what was
21 your final grade?

22 A. High 90's.

23 Q. Biology, what was your final
24 grade?

25 A. Low 90's, I guess.

1 Q. Computer apps, what was your
2 final grade?

3 A. High 90's.

4 Q. And gym, what was your final
5 grade?

6 A. 100.

7 Q. Can we agree that the school
8 district's termination of you from the
9 cheerleading squad, did not interfere
10 with your academic performance?

11 A. I would assume not.

12 Q. Now the --- this picture, which
13 has been marked as D-1, why did you
14 send that via Snap?

15 A. I was mad.

16 Q. What were you mad about?

17 A. A lot of stuff.

18 Q. And what are those things that
19 you were mad about?

20 A. I don't remember.

21 I don't remember about softball
22 or at school.

23 Q. You don't remember any of the
24 details?

25 A. No.

1 Q. Whose idea was it to take that
2 picture on Snap and send it out?

3 A. Mine, I guess.

4 Q. Okay.

5 And who's the other girl in
6 glasses, what is her name?

7 A. D.

8 Q. I didn't hear that.

9 A. D.

10 Q. And how long have you and D.
11 been friends?

12 A. Since we were born.

13 Q. And does she go to school here?

14 A. Yes.

15 Q. And is she in the same grade?

16 A. Yes.

17 Q. Is she in any extracurricular
18 activities this year?

19 A. Cheer.

20 Q. Was she --- was D. in cheer
21 last year, the 2017-18 school year?

22 A. No.

23 Q. And does cheer have both
24 varsity and junior varsity?

25 A. Yes.

1 Q. Is D. on the varsity team or
2 the junior varsity?

3 A. Varsity.

4 Q. And does the cheerleading squad
5 still require people to try out?

6 A. Yes.

7 Q. So D. tried out in the spring
8 of --- when you and D. were in tenth
9 grade?

10 A. It was like May of last school
11 year school year. So yes.

12 Q. So the tryouts are generally in
13 May of the preceding year. So if you
14 want to be in cheerleading in 11th
15 grade, you try out in May of 10th
16 grade.

17 Right?

18 A. Yes.

19 Q. Okay.

20 And when --- who were the
21 judges when you tried out in May of
22 2018?

23 A. We didn't know their names.

24 Q. How many judges were there?

25 A. Around like six or seven.

1 Q. And you don't know who any of
2 those six or seven people were?

3 A. No.

4 We don't get told their names.

5 Q. Are the coaches judges for the
6 tryouts?

7 A. No.

8 Q. Are the coaches in the ---?
9 Well, where are the tryouts conducted?

10 A. Their held in the gym, but we
11 all go in the locker room until, like
12 our specific number is called.

13 Q. All right.

14 Were the coaches in the locker
15 room during the tryouts?

16 A. No. They were in the gym.

17 Q. So the coaches are in the gym
18 during the tryouts, but as far as you
19 know, they aren't --- do not
20 participate in judging.

21 Is that correct?

22 A. Yes.

23 Q. Did you believe that you were
24 treated fairly in the tryouts during
25 May of 2018?

1 A. Yes.

2 Q. Have you applied to any
3 colleges yet or is it too early for
4 you?

5 A. Too early.

6 Q. So you have neither been
7 accepted nor rejected by any colleges.
8 Is that correct?

9 A. Yes.

10 Q. Were your grades last year
11 similar to what they were when you
12 were in tenth grade?

13 A. Wait. What?

14 Q. Excuse me. I misspoke.

15 Are your grades last year
16 similar to what they were in ninth
17 grade?

18 A. I think.

19 Q. Have you had any jobs since
20 being in high school?

21 A. I had a babysitting job.

22 Q. When?

23 A. Over the summer.

24 Q. Of what year?

25 A. 2018.

1 Q. Any other job since being in
2 high school other than the babysitting
3 job you had in the summer of 2018?

4 A. No.

5 Q. Tell me about cheerleading in
6 the sense does --- as to whether it
7 has a regular season or is it an all
8 year around activity?

9 A. Well, it --- we would cheer for
10 football, basketball and wrestling,
11 but after wrestling was over, it was
12 like, done, until the next year.

13 Q. And approximately when is the
14 football season?

15 A. The beginning of the year.

16 Q. Until when?

17 A. The end of October.

18 Q. Does it go into November and
19 like, Thanksgiving?

20 A. Not Thanksgiving.

21 I think it would go into
22 November if we make it to playoffs or
23 anything.

24 Q. All right.

25 And do you know whether your

1 team made it into the playoffs or will
2 make it into the playoffs this year?

3 A. I'm not sure.

4 Q. Basketball, when is that
5 season?

6 A. December.

7 Q. Until?

8 A. Like it starts in December
9 until like, the beginning of February.

10 Q. And does it go into March if
11 the team makes it into the playoffs?

12 Do you know?

13 A. I don't think so.

14 Q. And wrestling, when is that
15 season?

16 A. I think it starts in January.

17 Q. And how long does it go?

18 A. Some --- like a month. Like,
19 it would end the end of February, I
20 would assume.

21 Q. Wrestling is an indoor sport.

22 Right?

23 A. Yes.

24 Q. And where are the wrestling
25 meets? Are they in --- when they're

1 home meets, are they here in the high
2 school?

3 A. Yeah. They're in the high
4 school gym.

5 Q. Do the cheerleaders take part
6 in any community parades?

7 A. Yes.

8 Q. And what parades does cheer
9 take part in?

10 A. Homecoming parade and I think
11 the other one would be the Memorial
12 Day.

13 Q. And who sponsors the Memorial
14 Day Parade?

15 Do you know?

16 A. I don't know.

17 Q. Is that a city event, Mahanoy
18 City?

19 A. I think. I don't know.

20 Q. All right.

21 Any other parades other than
22 homecoming and Memorial Day?

23 A. Not anymore that I remember.

24 Q. Halloween?

25 A. No.

1 Q. Do you have Halloween Parades
2 up here?

3 A. There is, but we don't, like
4 cheer in it.

5 Q. Okay.

6 In addition to the two parades,
7 are there any other community events
8 that the cheerleading squad goes to?

9 A. I don't think so.

10 Q. When is practice during the
11 football season, for the cheerleading
12 squad?

13 A. Well, she schedules them like
14 whenever she has free time, Mrs.
15 Luchetta does. But normally, it would
16 be held on a Tuesday or a Thursday.

17 Q. So do you normally have two
18 practices a week during football
19 season?

20 A. When we can. It's hard to
21 during school because of volleyball.
22 Like it gets in the way.

23 Q. What ball?

24 I didn't hear you.

25 A. Volleyball.

1 Q. Okay.

2 A. And it gets in the way. So
3 she'll just like, reschedule them.

4 Q. So the general rule is two
5 times a week, unless there's a
6 conflict somewhere. And then it will
7 get rescheduled for some other time.

8 Is that accurate?

9 A. Normally, yes.

10 Q. How about basketball season?
11 Same thing?

12 A. I think.

13 Q. How about wrestling season,
14 which overlaps from what you've told
15 me, with basketball; right?

16 A. We would learn stuff for
17 wrestling at like practices during
18 basketball season.

19 Q. Okay.

20 A. Like we do the same cheers.

21 Q. And well how about practices?
22 Do --- do they try to have two a week?

23 A. I would assume they would try
24 to.

25 Q. And once wrestling is over, are

1 there any further practices the rest
2 of the year?

3 A. No. I don't think so.

4 Q. What is done to prepare for the
5 Memorial Day Parade if anything?

6 Is anything done to prepare for
7 the Memorial Day Parade?

8 A. No. 'Cause during the parade,
9 normally we just do a --- like we go
10 with the band and either we'll do a
11 dance or we'll just do like, certain
12 moves.

13 Q. When you say certain moves,
14 what do you mean?

15 A. We'll do like a pattern.
16 They'll go like, each and every other
17 person would like go up or something,
18 and then the other one would go down.
19 And that's basically what we would do.

20 Q. Okay.

21 So you don't need much more
22 practice for that?

23 A. No.

24 Q. Okay.

25 How about during the summers?

1 Are there any activities that the
2 cheerleading squad takes part in?

3 A. Cheer camp, but that's it.

4 Q. And what is cheer camp?

5 A. Varsity would go to a certain
6 school and just learn cheers.

7 Q. And which school do you go to?

8 A. I think this year was the first
9 year that we didn't. We went to
10 Shenandoah's School.

11 Q. And is that a required
12 activity, that you go to the cheer
13 camp?

14 A. It's not. Like if you have
15 something other --- like something
16 else to do, you can do that I guess.

17 Q. And when is the cross country
18 season? When does it start and end?

19 A. Practices start in the summer,
20 I think.

21 Q. And when does the season end?

22 A. I'm not sure.

23 Around like, maybe like the
24 beginning of June --- or November.

25 Q. Okay.

1 So you're still in the midst of
2 the season and it's not come to an end
3 yet?

4 A. Yes.

5 Q. Okay.

6 And you think it ends some time
7 next month?

8 A. Maybe. I don't know.

9 Q. Does cheerleading ever engage
10 in any activities on a Saturday,
11 unless Memorial --- well, Memorial Day
12 would be on Monday?

13 A. I don't think so.

14 Q. Homecoming, Friday night
15 usually?

16 A. Yeah.

17 Q. Does cheerleading engage in any
18 activities on a Sunday?

19 A. No.

20 Q. Where was the picture in
21 Exhibit D-1 taken?

22 A. The Cocoa Hut.

23 Q. And where's that located?

24 A. In Mahanoy City.

25 Q. And how do you actually get the

1 picture onto Snap?

2 Can you tell me the process?

3 A. You would just like, take it
4 like --- there's like a button and you
5 just take the photo.

6 Q. So do you have to go into the
7 Snap application?

8 A. Yes.

9 Q. And when you go into the Snap
10 application, the camera function of
11 the cell phone works.

12 Is that correct?

13 A. Yes.

14 Q. And there's a button on the
15 screen that you just push?

16 A. Yes.

17 Q. Okay.

18 And how do you get the words
19 that appear on that picture into the
20 Snap?

21 A. You type it.

22 Q. Okay.

23 So there's a place in the app
24 for words to be added to the picture.

25 Is that correct?

1 A. Yes.

2 Q. Okay.

3 Who typed the words? You or
4 your friend?

5 A. I think I did.

6 Q. Please take a look at Exhibit
7 D-4.

8 ---

9 (Whereupon, Defendant
10 Exhibit 4, Student
11 Handbook Page, was
12 marked for
13 identification.)

14 ---

15 BY ATTORNEY LEVIN:

16 Q. It's behind tab four.

17 Am I correct that the school
18 district distributes student handbooks
19 every year?

20 A. Yes.

21 Q. And am I correct that the
22 student handbooks contain rules of
23 conduct?

24 A. I guess.

25 Q. Do you get that handbook every

1 year, since you've been in high
2 school?

3 A. Yes.

4 Q. And do you remember seeing this
5 page from the handbook last year?

6 ATTORNEY HELPER:

7 Object to form.

8 Could you be more
9 specific about what time during
10 the year?

11 ATTORNEY LEVIN:

12 I'll be happy to ask her
13 that.

14 THE WITNESS

15 I don't remember.

16 BY ATTORNEY LEVIN:

17 Q. You don't remember one way or
18 the other?

19 A. I don't know.

20 Q. They usually distribute the
21 handbooks at the beginning of the
22 school year.

23 Is that correct?

24 A. Yes.

25 Q. And as far as you remember, you

1 would have gotten a handbook at the
2 beginning of ninth grade.

3 Right?

4 A. Yes.

5 Q. And as far as you remember, you
6 would have gotten a handbook at the
7 beginning of tenth grade.

8 Right?

9 A. Yes.

10 Q. And as far as you remember, you
11 got another handbook this year.

12 Right?

13 A. Yes.

14 Q. And the handbooks, with respect
15 to the rules for behavior, basically
16 contain the same rules every year.

17 Right?

18 A. I guess.

19 Q. You don't remember there being
20 any differences; do you?

21 A. No.

22 ATTORNEY HELPER:

23 Object to form.

24 BY ATTORNEY LEVIN:

25 Q. Do you ever remember reading

1 this paragraph that is numbered eight,
2 personal conduct, before looking at it
3 just now?

4 A. No.

5 Q. Please take a look at Exhibit
6 D-3, which is behind tab three.

7 ---

8 (Whereupon, Defendant
9 Exhibit 3, Cheerleading
10 Rules, was marked for
11 identification.)

12 ---

13 BY ATTORNEY LEVIN:

14 Q. Those are cheerleading rules.
15 Do you remember getting them?

16 A. I don't remember.

17 Q. Are you denying that you ever
18 got those before?

19 A. No. I don't remember them.

20 Q. Okay.

21 Is it possible you got them and
22 you just don't remember?

23 A. Yes.

24 Q. Did you ever read them before?
25 Do you know?

1 A. I don't remember.

2 Q. The rules contain attendance
3 rules. Take a look and read it. And
4 then tell me when you're finished
5 reading. I have some questions for
6 you.

7 ---

8 (WHEREUPON, WITNESS COMPLIES.)

9 ---

10 BY ATTORNEY LEVIN:

11 Q. Did you have a chance to read
12 them?

13 A. Yes.

14 Q. Do you understand them?

15 A. Yes.

16 Q. Do you think they're
17 reasonable?

18 A. Yes.

19 Q. Take a look at the academic
20 policy rules. Read them to yourself
21 and tell me when you're finished.

22 ---

23 (WHEREUPON, WITNESS COMPLIES.)

24 ---

25 THE WITNESS:

1 I'm done.

2 BY ATTORNEY LEVIN:

3 Q. Did you have a chance to read
4 them?

5 A. Yes.

6 Q. Did you understand them?

7 A. Yes.

8 Q. Do you think they're reasonable
9 and appropriate?

10 A. Yes.

11 Q. Do you know if cheerleading
12 falls under the PIAA rules?

13 A. I'm not sure.

14 Q. Do you know what PIAA is?

15 A. No.

16 Q. Did you ever hear of
17 Pennsylvania Interscholastic Athletic
18 Association?

19 A. I think that's what, like the
20 sports are in.

21 Q. Okay.

22 A. Like football and basketball.

23 Q. But you've never heard that
24 they have any jurisdiction over
25 cheerleading?

1 A. No.

2 Q. Okay.

3 Take a look at the ---. Read
4 the rules under uniforms. Tell me
5 when you're finished then. And then
6 go onto the second page of the
7 exhibit.

8 ---

9 (WHEREUPON, WITNESS COMPLIES.)

10 ---

11 BY ATTORNEY LEVIN:

12 Q. Did you read the rules
13 pertaining to uniforms?

14 A. Yes.

15 Q. Did you understand them?

16 A. Yes.

17 Q. Do you think they're reasonable
18 and appropriate?

19 A. Yes.

20 Q. Please take a look at the rules
21 under sportsmanship and
22 responsibility, slash, fundraising.
23 And tell me when you've finished
24 reading.

25 ---

1 (WHEREUPON, WITNESS COMPLIES.)

2 ---

3 BY ATTORNEY LEVIN:

4 Q. Did you finish reading?

5 A. Yes.

6 Q. Do you understand what the
7 rules say?

8 A. Yes.

9 Q. Do you think those rules are
10 reasonable and appropriate?

11 ATTORNEY HELPER:

12 I'm going to object to
13 form, but you can answer.

14 BY ATTORNEY LEVIN:

15 Q. Do you think those rules are
16 reasonable and appropriate?

17 A. I guess. Yes.

18 Q. And the last set of rules are
19 under the heading of technology.
20 Please read those and I'll ask you
21 some questions when you finish
22 reading.

23 ---

24 (WHEREUPON, WITNESS COMPLIES.)

25 ---

1 BY ATTORNEY LEVIN:

2 Q. Did you have a chance to read
3 those rules?

4 A. Yes.

5 Q. Did you understand them?

6 A. Somewhat.

7 Q. Excuse me?

8 A. Somewhat.

9 Q. Okay.

10 Do you think those rules are
11 reasonable and appropriate?

12 ATTORNEY HELPER:

13 I'll object to form
14 again, but you can answer.

15 THE WITNESS:

16 I guess.

17 BY ATTORNEY LEVIN:

18 Q. On the second page of that ---.

19 ---

20 (WHEREUPON, THERE WAS A BRIEF
21 INTERRUPTION IN THE PROCEEDINGS.)

22 ---

23 ATTORNEY LEVIN:

24 Let the record reflect
25 that the superintendent just

1 came into the deposition.

2 Do you know everybody?

3 DR. GREEN:

4 Yes. Well, I don't
5 know ---.

6 ATTORNEY HELFER:

7 Arleigh Helfer.

8 DR. GREEN:

9 Hi. Mrs. Green.

10 ATTORNEY LEVIN:

11 He's representing the
12 Plaintiffs, along with the
13 ACLU. He's from a different
14 firm.

15 DR. GREEN:

16 Okay.

17 ATTORNEY LEVIN:

18 Okay.

19 BY ATTORNEY LEVIN:

20 Q. Under the sportsmanship rules,
21 the first bullet point says, please
22 have respect for your school, coaches,
23 teachers, other cheerleaders and
24 teams, end of quote.

25 Did I read that sentence

1 correctly?

2 A. Yes.

3 Q. Do you understand what that
4 says?

5 A. I guess.

6 Q. Do you think that's reasonable
7 and appropriate?

8 A. I guess.

9 Q. The next sentence says,
10 remember you are respecting your
11 school --- representing your school
12 when at games, fundraisers and other
13 events.

14 Did I read that correctly?

15 A. Yes.

16 Q. Do you understand that rule?

17 A. Yes.

18 Q. Do you think that that's
19 accurate?

20 ATTORNEY HELPER:

21 I'll object to form.

22 You can answer.

23 THE WITNESS:

24 I guess.

25 BY ATTORNEY LEVIN:

1 Q. Then the next sentence says,
2 quote, good sportsmanship will be
3 enforced. This includes foul language
4 and inappropriate gestures, end of
5 quote.

6 Did I read that sentence
7 correctly?

8 A. Yes.

9 Q. Do you understand what that
10 says?

11 A. Yes.

12 Q. Do you think that's reasonable
13 and appropriate?

14 ATTORNEY HELPER:

15 And I'll object to form.
16 You can answer.

17 THE WITNESS:

18 I guess.

19 BY ATTORNEY LEVIN:

20 Q. Now, you would agree that the
21 word fuck is in violation of that
22 sentence; right?

23 ATTORNEY HELPER:

24 I'll object to form.

25 THE WITNESS:

1 I guess, when you're
2 representing your school.

3 BY ATTORNEY LEVIN:

4 Q. And you would agree that giving
5 the middle finger is an inappropriate
6 gesture?

7 Is that correct?

8 ATTORNEY HELPER:

9 And I'll object to form
10 again, but you can answer.

11 THE WITNESS:

12 Yes.

13 BY ATTORNEY LEVIN:

14 Q. Do you think it's a proper and
15 laudable goal for schools --- for
16 public schools, to teach students to
17 have respect for others?

18 A. Yes.

19 Q. Do you agree that it's a proper
20 and laudable goal for school districts
21 to hold students accountable for not
22 following applicable rules?

23 ATTORNEY HELPER:

24 I'm going to object to
25 form. Assumes the rules are

1 valid.

2 BY ATTORNEY LEVIN:

3 Q. Would you agree with that?

4 A. I guess.

5 Q. Do you agree the cheerleaders
6 are representing their teams like the
7 rule states?

8 A. When you're at games and all,
9 yes.

10 Q. Do you live in the Mahanoy Area
11 School District?

12 A. Like, do I live ---?

13 Q. You gave an address.

14 A. Yes.

15 Q. It is within the boundaries of
16 the Mahanoy Area School District?

17 A. Yes.

18 Q. All right.

19 And can we agree that the
20 Mahanoy Area School District is a
21 small school district?

22 A. Yes.

23 Q. Would you agree that in
24 Mahanoy, it seems like everybody knows
25 everybody else?

1 A. Yes.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Try to keep your voice up.
5 Okay?

6 And can we agree that in
7 Mahanoy, it's one of those places
8 where many people in the community
9 know the kids from the different teams
10 and squads, including the cheerleading
11 squad?

12 A. I would assume.

13 Q. Go back to Exhibit D-4 that you
14 looked at before. It's behind tab
15 four. The same rules that you see
16 here for personal conduct, that's
17 under the handbook this year.

18 Isn't that correct?

19 ATTORNEY HELFER:

20 Do you have a copy of
21 the handbook from this year? I
22 don't have a copy?

23 ATTORNEY LEVIN:

24 I have a copy of a page.

25 BY ATTORNEY LEVIN:

1 Q. But do you remember or don't
2 you know?

3 ATTORNEY HELPER:

4 I'll object to form.

5 The documents speak for
6 themselves. Asked and
7 answered. She's already
8 testified she doesn't remember
9 reading it.

10 BY ATTORNEY LEVIN:

11 Q. Do you know if the handbook
12 this year is the same as last year, in
13 --- with respect to this paragraph?

14 A. I don't know.

15 Q. The first sentence on the
16 paragraph dealing with personal
17 conduct says, participation on an
18 athletic team or cheerleading squad in
19 the Mahanoy Area School District is a
20 privilege. The sentence continues on
21 but I'm going to stop there.

22 Do you agree with that or
23 disagree?

24 ATTORNEY HELPER:

25 I'm going to object to

1 form.

2 BY ATTORNEY LEVIN:

3 Q. Do you agree or disagree?

4 A. I don't ---.

5 ATTORNEY HELPER:

6 Do you understand what
7 it means?

8 THE WITNESS:

9 No.

10 BY ATTORNEY LEVIN:

11 Q. You don't know what the word
12 privilege means?

13 A. I don't understand it.

14 Q. Do you agree with me that
15 students don't have the automatic
16 right to be on the cheerleading team?

17 A. I guess.

18 Q. Do you agree with me that
19 students have to meet certain
20 conditions in order to get on the
21 cheerleading team?

22 A. Yes.

23 Q. Do you agree with me the school
24 district has no duty to have a
25 cheerleading squad?

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ATTORNEY HELPER:

I'm going to object to
the form. I mean, if you know.

THE WITNESS:

I don't.

ATTORNEY HELPER:

I mean, do you
understand what he means by
duty?

ATTORNEY LEVIN:

Counsel, with all due
respect, you're allowed to put
on a form objection. You're
not allowed to coach your
witness like that.

ATTORNEY HELPER:

Okay.

Well, I'll object to the
degree that you're using terms
with legal implications. She's
not here to testify to the
legal meaning of things. She
may not understand those. So I
do expect the questions to be
fair.

1 ATTORNEY LEVIN:

2 Well, I'm entitled to
3 know what she knows and what
4 she doesn't.

5 ATTORNEY HELPER:

6 Oh, you do --- you
7 certainly are.

8 ATTORNEY LEVIN:

9 And you don't have to
10 tell her when she doesn't know
11 something.

12 ATTORNEY HELPER:

13 Okay.

14 Well, with all ---.

15 BY ATTORNEY LEVIN:

16 Q. Do you have any knowledge ---?

17 ATTORNEY HELPER:

18 She's --- she is a
19 teenager and I will object if
20 you are going to ask her
21 questions in which you're using
22 legal terms without explaining
23 or defining those legal terms
24 for her.

25 ATTORNEY LEVIN:

1 Not a proper objection.

2 BY ATTORNEY LEVIN:

3 Q. Do you know if the school
4 district has a duty to have a
5 cheerleading squad?

6 A. I don't know.

7 Q. Do you know if the school
8 district has the right to attach
9 whatever conditions it wants with
10 respect to it's cheerleading squad?

11 A. I guess. I don't know.

12 Q. Do you agree with me that
13 cheerleading can be dangerous,
14 depending upon the stunts that the
15 team does?

16 A. Yes.

17 Q. Is it correct that cheerleaders
18 have to depend on other cheerleaders
19 to catch them for some of the
20 exercises?

21 A. Yes.

22 Q. Can you explain that? Give us
23 some examples?

24 A. Like if anyone was up and they
25 fall backwards, they have to like,

1 depend on the person in the back to
2 catch them.

3 Q. Are there any other stunts that
4 your cheerleading squad does where
5 teammates have to depend on the others
6 to do what they're supposed to be
7 doing?

8 A. All of them.

9 ATTORNEY HELPER:

10 Object to form.

11 BY ATTORNEY LEVIN:

12 Q. Excuse me?

13 A. All of them. Like all of the
14 stunts, you have to depend on each
15 other.

16 Q. Do the stunts have names?

17 A. Some of them.

18 Q. What are some of the names that
19 you remember?

20 A. Like up at an extension.

21 Q. I didn't hear that.

22 Extension?

23 A. Yes.

24 Q. And what's an extension?

25 A. Well, I don't know how to

1 explain it. You would like, go up and
2 in people's hands, I guess. I don't
3 know how to explain it.

4 Q. All right.

5 Give me another name of another
6 stunt?

7 A. A lib.

8 Q. I didn't hear that.

9 A. A lib.

10 Q. L-I-B?

11 A. L-I --- yeah, I think. I
12 guess. I don't know.

13 Q. Okay.

14 And what's a lib?

15 A. You would basically do the same
16 thing as an extension, but with only
17 one foot instead of both.

18 Q. Are there any other names of
19 any of the stunts?

20 A. I don't know.

21 A flip we could do.

22 Q. And what's a flip?

23 A. You just like flip --- I don't
24 know how to explain it.

25 Q. All right.

1 Any other names of any other
2 stunts?

3 A. I don't think so.

4 Q. And then there are some stunts
5 that the team does that don't have
6 names.

7 Is that correct?

8 A. I guess. That's --- what I
9 said was basically all we do.

10 Q. You only do extensions, libs
11 and flips, as far as stunts go?

12 A. And preps, which is like a
13 lower extension.

14 Q. All right.

15 Any others?

16 A. Not --- no.

17 Q. All right.

18 And if any of the kids don't do
19 what they're supposed to do, somebody
20 could get injured.

21 Is that correct?

22 A. Yes.

23 Q. Would you agree with me that
24 one of the purposes of cheerleading is
25 to teach teambuilding?

1 A. Yes.

2 Q. When you were told that you
3 were being removed from the
4 cheerleading squad last year, did you
5 have to go to the doctor as the
6 result?

7 ATTORNEY HELPER:

8 Object to form.

9 THE WITNESS:

10 No.

11 BY ATTORNEY LEVIN:

12 Q. Did you need any therapy or
13 other treatment as a result of being
14 removed from the cheerleading squad?

15 A. No.

16 Q. Have you incurred any expenses
17 for any medical services as a result
18 of being removed from the cheerleading
19 squad?

20 A. No.

21 Q. How did the other cheerleaders
22 treat you when you returned to the
23 cheerleading squad after the judge
24 granted the preliminary injunction?

25 A. They were --- they acted how

1 they would act any other time. Like,
2 they were friendly and fine.

3 Q. Nobody mistreated you.

4 Is that correct?

5 A. Not to me.

6 Like, they said stuff.

7 Q. But not to you?

8 Is that correct? You have give
9 a verbal response.

10 A. Yes.

11 Q. And you know that because other
12 people told you that?

13 A. Yes.

14 Q. You never heard it directly.

15 Is that correct?

16 A. Yes.

17 Q. Anybody bully you after you
18 returned to the team?

19 A. No one said anything to me
20 about it.

21 Q. Excuse me? I didn't hear you?

22 A. No one said anything to me
23 about it.

24 Q. Any problems from any of the
25 coaches when you were put back on the

1 team?

2 A. No.

3 Q. Who told you that you were
4 being removed from the cheerleading
5 squad?

6 A. Mrs. Luchetta.

7 Q. And where were you and she when
8 she told you that?

9 A. She called me to her room.

10 Q. And is that where you were?

11 A. Yes.

12 Q. Which room was that? Do you
13 remember?

14 A. It was her old math room.

15 Q. When you say her old math room,
16 you mean her former math room?

17 A. I guess. I don't know.

18 Q. Did she change classrooms?

19 A. Yeah. A lot of ---.

20 Q. Excuse me. Let me turn this
21 off.

22 A. A lot of teachers did.

23 A lot of the teachers did.

24 Q. And is there anybody else who
25 overheard what she was telling you

1 when she told you you were being
2 removed?

3 ATTORNEY HELPER:

4 Object to form.

5 THE WITNESS:

6 No one else was in the
7 hallway --- or the classroom,
8 but there were people in the
9 hallway.

10 BY ATTORNEY LEVIN:

11 Q. Okay.

12 Do you know if anybody
13 overheard what she was telling you?

14 A. No.

15 Q. What exactly did she tell you?

16 A. She just showed me the picture.
17 And then said that it was
18 disrespectful towards her and that I
19 was kicked off.

20 Q. All right.

21 And how did you respond if at
22 all?

23 A. I cried.

24 Q. Anything else?

25 Did you say anything?

1 A. I don't remember.

2 Q. All right.

3 And did she say anything else
4 after she said you were kicked off?

5 A. I don't ---. I don't know.

6 Q. How long did you ---? I assume
7 you were standing there when she told
8 you this or were you sitting?

9 A. Standing.

10 Q. How long did you stand there
11 before you left?

12 A. A few minutes. And then I went
13 to the office.

14 Q. And who did you talk to?

15 A. I called my mom and explained
16 it to my mom on the phone.

17 Q. Did you use the school phone or
18 your cell phone?

19 A. School phone.

20 Q. And was anybody with you when
21 you were calling your mom from the
22 office?

23 A. Mrs. Luchetta walked into the
24 office.

25 Q. What --- during the time that

1 you left Mrs. Luchetta's room and
2 walking to the office before you got
3 to the office, did you and Mrs.
4 Luchetta say anything to each other?

5 A. I don't remember.

6 Q. When you got into the office
7 and before you picked up the phone,
8 did you and Mrs. Luchetta say anything
9 to each other?

10 A. I don't think so.

11 Q. When did Mrs. Luchetta leave
12 you? Was she ---?

13 A. After she talked to my mom.

14 Q. Okay.

15 So she talked to your mom as
16 well?

17 A. Yes.

18 Q. Did you call or did Mrs.
19 Luchetta call your mom?

20 A. I called my mom.

21 Q. And how did Mrs. Luchetta get
22 on the phone?

23 A. My mom asked to speak with her.

24 Q. And put --- gave Mrs. Luchetta
25 the phone.

1 Is that correct?

2 A. Yes.

3 Q. What did you hear Mrs. Luchetta
4 say when she was on the phone with
5 your mom?

6 A. I don't remember.

7 Q. How long was the conversation
8 between Mrs. Luchetta and your mom on
9 the phone?

10 A. I'm not sure.

11 Q. And where in the office was the
12 call made from?

13 A. It was like somewhere in one of
14 the like, separate rooms.

15 Q. Is there ---? I'm sorry. I
16 didn't mean to interrupt.

17 A. I don't know which room
18 specifically.

19 Q. Was anybody else in the room
20 other than you and Mrs. Luchetta?

21 A. There --- like right outside of
22 the door was the --- like the people
23 who work in the office.

24 Q. But in the room itself, nobody
25 else? Just you and Mrs. Luchetta?

1 A. Yes.

2 Q. All right.

3 And when Mrs. Luchetta finished
4 talking to your mom, then what
5 happened?

6 A. Then I think I went to the
7 principal's office.

8 I don't remember.

9 Q. And where did Mrs. Luchetta go?
10 Do you know?

11 A. I don't know.

12 Q. You parted ways at that point?

13 A. I think.

14 Q. And when you went to the
15 principal's office, did you talk to
16 anybody?

17 A. Mr. Smith.

18 Q. And Mr. Smith is who?

19 A. The old principal.

20 Q. And what did you say to Mr.
21 Smith?

22 A. I think I asked him if there
23 was anything that I could do to be put
24 back on. And he said that he can't go
25 against the coach's decisions.

1 Q. Was anybody else present when
2 you were talking to Mr. Smith about
3 this?

4 A. No.

5 Q. And what else was said between
6 you and Mr. Smith at that point?

7 A. He told me that I would have
8 been able to get disciplined because I
9 said school in there.

10 I think that's it.

11 Q. All right.

12 How long was that conversation
13 between you and Mr. Smith?

14 A. I don't remember.

15 Q. Did you personally talk to Mr.
16 Smith at any other time about this
17 incident in any way?

18 A. No.

19 Q. Did you ever talk to Coach
20 Luchetta about the incident, other
21 than what you've already described the
22 morning that she told you you were
23 being removed from the team?

24 A. No.

25 Q. Did you ever talk to any other

1 school district administrator about
2 being removed from the team other than
3 the principal?

4 A. No.

5 ATTORNEY HELPER:

6 I'll object to form.

7 BY ATTORNEY LEVIN:

8 Q. No?

9 A. No.

10 Q. Now when you were removed from
11 the team for the 2017-18 school year,
12 you knew that you were allowed to try
13 out again for the 2018-19 school year.

14 Right?

15 A. Yes.

16 Q. In ninth grade, were you
17 involved in cheerleading?

18 A. Yes.

19 Q. Was it a school district team,
20 or a community team or what?

21 A. The school's team.

22 Q. Okay.

23 And was it junior varsity or
24 varsity?

25 A. Junior varsity.

1 Q. And to get onto junior varsity,
2 do you have to try out for that?

3 A. Yes.

4 Q. In eighth grade, were you on
5 any cheerleading team or squad?

6 A. No.

7 Q. In seventh grade, were you in
8 any cheerleading team or squad?

9 A. No.

10 Q. In sixth grade, were you in any
11 cheerleading team or squad?

12 A. Yes.

13 Q. And was this a school district
14 team, or a community team or something
15 else?

16 A. That was the school's team.

17 Q. Okay.

18 And what school were you in in
19 sixth grade?

20 A. Mahanoy Middle School.

21 Q. And it was a middle school
22 cheerleading team.

23 Is that correct?

24 A. Yes.

25 Q. And what activities did the

1 team cheer for?

2 A. Football.

3 Q. The high school team or was
4 there middle school football team?

5 A. There is a fifth and sixth
6 grade team.

7 ---

8 (WHEREUPON, THERE WAS A BRIEF
9 INTERRUPTION IN THE PROCEEDINGS.)

10 ---

11 ATTORNEY LEVIN:

12 I thought I turned this
13 off.

14 BY ATTORNEY LEVIN:

15 Q. And when was the middle school
16 football season? Do you remember?

17 A. I think it was the same --- I
18 think it's the same as the high school
19 season.

20 Q. All right.

21 And are there any other
22 cheerleading activities in sixth-grade
23 cheerleading, other than cheering for
24 the football team during their season?

25 A. I don't remember.

1 Q. Did you go to the Memorial Day
2 Parade when you were in the sixth
3 grade team?

4 A. I don't remember.

5 Q. In fifth grade, were you on any
6 cheerleading teams?

7 A. Yes.

8 Q. Which one?

9 A. The Mahanoy Area. Like, the
10 same one.

11 Q. Same one.

12 Is that the first year you were
13 ever in cheerleading?

14 A. Yes.

15 Q. Why did you stop cheerleading
16 after sixth grade, until you resumed
17 it again in ninth grade?

18 A. I tried out my sixth grade year
19 and I didn't make it. So I just
20 thought I wasn't going to make it, the
21 seventh grade team --- or 'cause I
22 tried out in sixth grade, at the end
23 of sixth grade.

24 Q. For seventh grade?

25 A. Yes.

1 Q. And you didn't make it?

2 A. Yeah.

3 Q. Okay.

4 And did you try out at the end
5 of seventh grade for eighth grade?

6 A. No.

7 Q. Why not?

8 A. Because I didn't think I was
9 going to make it.

10 Q. And then at the end of eighth
11 grade, you tried out for the ninth
12 grade JV.

13 Is that correct?

14 A. Yes.

15 Q. Why did you think that you
16 might make it at that point?

17 A. 'Cause there was a different
18 coach and it was like different
19 judging.

20 Q. Please take a look at Exhibit
21 D-11, behind tab 11.

22 ---

23 (Whereupon, Defendant
24 Exhibit 11, Complaint,
25 was marked for

1 identification.)

2 ---

3 BY ATTORNEY LEVIN:

4 Q. I'll represent to you that
5 that's a copy of the complaint that
6 was filed in this case.

7 Did you read this before it was
8 filed?

9 A. I don't remember.

10 Q. Do you know if it contains any
11 mistakes or errors?

12 A. I don't know.

13 Q. Please take a look at paragraph
14 26 of the complaint.

15 That says on or about Saturday,
16 May 28 you posted a Snap.

17 Do you see that?

18 A. Yes.

19 Q. I'm confused because when I
20 checked the calendar, the 28th is a
21 Sunday.

22 Do you remember if it was a
23 Saturday or a Sunday that you posted
24 the Snap?

25 A. I don't know.

1 Q. So you don't know if you posted
2 the Snap on the 27th or the 28th?

3 Is that correct?

4 A. Yes.

5 Q. Now in the Snap --- and if you
6 want to take a look at D-1 again. You
7 said, quote, fuck school, end of
8 quote.

9 Right?

10 A. Yes.

11 Q. Were you referring to the
12 Mahanoy High School?

13 A. I was just referring to school
14 in general.

15 Q. Well, does it refer to any
16 school other than the Mahanoy School,
17 High School?

18 ATTORNEY HELPER:

19 Objection. Asked and
20 answered.

21 THE WITNESS:

22 Not ---.

23 BY ATTORNEY LEVIN:

24 Q. Excuse me?

25 A. Not specifically.

1 Q. And softball, you were
2 referring to the school's softball
3 team because you didn't get the
4 position you wanted.

5 Right?

6 ATTORNEY HELPER:

7 Objection to form.

8 A. Not ---.

9 ATTORNEY HELPER:

10 Was it the school
11 softball team?

12 THE WITNESS:

13 It wasn't our softball
14 team. It wasn't the school's
15 softball team.

16 BY ATTORNEY LEVIN:

17 Q. Okay.

18 Cheer was the school's
19 cheerleading squad.

20 Right?

21 A. I was just saying it in
22 general. Like, I wasn't specifically
23 saying anything ---.

24 Q. Were you referring to any other
25 cheerleading other than the

1 school ---?

2 ATTORNEY HELPER:

3 Objection. She was
4 still answering.

5 BY ATTORNEY LEVIN:

6 Q. I'm sorry, I thought ---.

7 A. I said it because I was mad.

8 Q. You were mad at ---?

9 A. Because I didn't get ---. I
10 didn't make it onto varsity.

11 Q. And you didn't make it on the
12 varsity by the school district.

13 Right?

14 A. Yes.

15 Q. So you were mad at not getting
16 on the school district's varsity team,
17 so you said fuck cheer.

18 Right?

19 A. Yes.

20 Q. Would you agree that it would
21 be reasonable for a person reading
22 your Snap to think that you were
23 referring to the school district's
24 cheerleading squad when you said fuck
25 cheer?

1 A. I guess.

2 Q. Do you think it would be
3 reasonable for someone reading your
4 Snap, and knowing where you went to
5 school, that you were referring to the
6 high school when you said fuck school?

7 A. I guess.

8 Q. Please take a look at paragraph
9 63 of your complaint.

10 In that complaint, in that
11 paragraph it is alleged, quote, among
12 other benefits, students who
13 participate in extracurricular
14 activities are less likely to abuse
15 alcohol or drugs than students who do
16 not participate in extracurricular
17 activities.

18 Do you know anything about that
19 subject?

20 A. No.

21 Q. Paragraph 61, it's alleged
22 that, quote, being removed from the
23 squad impairs your opportunities to
24 gain admission to top colleges.

25 Do you see that?

1 A. Yes.

2 Q. Do you have any knowledge as to
3 the basis for that statement?

4 A. No.

5 Q. Please take a look at paragraph
6 62, where it's alleged sustained
7 participation in extracurricular
8 activities also has significant
9 benefits for student well-being.

10 Do you have any basis for that
11 statement?

12 A. No.

13 Q. I added page numbers on the
14 lower-right hand corner to make it
15 easier to identify pages. Could you
16 go to page 12? In paragraph E, it is
17 alleged that you're seeking damages in
18 amount to be determined by a trial.

19 What damages are you seeking?
20 Do you know?

21 A. I don't know.

22 Q. Do you think it's fair to keep
23 someone off of extracurricular
24 activities if they're struggling in
25 school?

1 ATTORNEY HELPER:

2 Object to the form.

3 THE WITNESS:

4 If they're eligible, I
5 guess.

6 BY ATTORNEY LEVIN:

7 Q. Well, if they're struggling so
8 that they don't meet the academic
9 requirements, do you think it's fair
10 to keep them off?

11 A. I guess.

12 ATTORNEY HELPER:

13 I'm going to object to
14 form. You're asking for an
15 opinion not fact.

16 BY ATTORNEY LEVIN:

17 Q. And why is it that you think
18 that's fair to keep them off if
19 they're struggling in school?

20 ATTORNEY HELPER:

21 Object to form.

22 THE WITNESS:

23 They have to stay off if
24 they're ineligible. Like, if
25 they're failing two classes,

1 they get benched for it.

2 So ---.

3 BY ATTORNEY LEVIN:

4 Q. The uniforms, who pays for them
5 for cheerleading? Do you know?

6 A. I don't know.

7 Q. Do the --- does the school
8 district provide it to you?

9 A. I guess.

10 Q. Do you think that teaching
11 students that there are consequences
12 for crude and profane communications
13 on social media is a proper role for
14 school districts?

15 ATTORNEY HELPER:

16 I'm going to object to
17 the form. It's calling for an
18 opinion.

19 THE WITNESS:

20 I don't know.

21 BY ATTORNEY LEVIN:

22 Q. Do you know how your conduct
23 affected the other members of the
24 cheerleader squad last year?

25 ATTORNEY HELPER:

1 Object to form.

2 THE WITNESS:

3 None of them ever said
4 anything to me about it.

5 BY ATTORNEY LEVIN:

6 Q. So is the answer you don't know
7 what affect it had on them?

8 A. Yeah. I don't know.

9 Q. Do you know how it affected any
10 of the other cheerleaders that you
11 were allowed back on the cheerleading
12 squad?

13 ATTORNEY HELPER:

14 I'm going to object as
15 asked and answered.

16 THE WITNESS:

17 People were mad about it
18 I guess.

19 BY ATTORNEY LEVIN:

20 Q. Okay.

21 And how do you know they were
22 mad about it?

23 A. 'Cause they said stuff and
24 other people heard it.

25 Q. Did they say stuff to you? Or

1 did other people tell you they said
2 stuff?

3 ATTORNEY HELPER:

4 Object to form.

5 THE WITNESS:

6 They didn't say anything
7 directly to me.

8 BY ATTORNEY LEVIN:

9 Q. All right.

10 So anything you know about them
11 being mad is because somebody else
12 told you?

13 A. Yes.

14 Q. And did the people who told you
15 what other cheerleaders were saying or
16 were mad, did they tell you what they
17 were saying?

18 A. I got told what one of them
19 said.

20 Q. And who is the person who
21 allegedly said what you're going to
22 tell me about?

23 A. P.B.

24 Q. Okay.

25 And what did P.B. allegedly

1 say?

2 A. All she said was that ---
3 because I didn't know one of the
4 cheers, so I stood out for it. And
5 she said that if I'm just going to
6 keep doing that, then I shouldn't have
7 came back on.

8 Q. You mean, if you stay out of
9 participating in a cheer that you
10 don't know about, you shouldn't have
11 come back on.

12 Is that your understanding?

13 A. Yes.

14 Q. And who told you that P.B. said
15 that?

16 A. M., I think.

17 Q. And is M. on the team?

18 A. Yes.

19 Q. And when did M. tell you that?

20 A. I think it was like a few
21 minutes after she said it.

22 Q. And do you remember the date
23 that this took place?

24 A. No.

25 Q. Did you complain to anybody

1 about what M. told you P. said?

2 A. No. I just went up and told my
3 mom.

4 Q. And was this at a practice or
5 was this an event or what?

6 A. A football game.

7 Q. Do you remember which game it
8 was?

9 A. No.

10 Q. Do you remember who the other
11 team was?

12 A. I don't remember.

13 Q. Do you remember if it was a
14 home game or an away game?

15 A. Home, I think.

16 Q. And do you know if your mom did
17 anything when you told her that?

18 A. I don't know.

19 ATTORNEY HELFER:

20 Just with regard to the
21 clock, it's 10:28. So she's
22 going to have to leave in a
23 couple minutes.

24 ATTORNEY LEVIN:

25 All right.

1 Let me put on the record
2 that I'm not yet finished with
3 my questioning. B.L. has a
4 game to go to. So we agreed
5 that she would be able to leave
6 and we will reschedule the
7 continuation of her deposition
8 at a mutual convenient time.

9 Is that agreeable?

10 ATTORNEY HELFER:

11 Yes. That's agreeable.

12 ATTORNEY LEVIN:

13 Okay.

14 Thank you very much.

15 * * * * *

16 DEPOSITION CONCLUDED AT 10:29 A.M.

17 * * * * *

18

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF LUZERNE)

3 CERTIFICATE

4 I, Samantha Bruer, a Notary Public in
5 and for the Commonwealth of Pennsylvania, do
6 hereby certify:

7 That the witness, B.L., whose
8 testimony appears in the foregoing deposition,
9 was duly sworn by me on 10-24-18 and that the
10 transcribed deposition of said witness is a
11 true record of the testimony given by said
12 witness;

13 That the proceeding is herein recorded
14 fully and accurately;

15 That I am neither attorney nor counsel
16 for, nor related to any of the parties to the
17 action in which these depositions were taken,
18 and further that I am not a relative of any
19 attorney or counsel employed by the parties
20 hereto, or financially interested in this
21 action.

22 Dated the 26th day of November, 2018

23 COMMONWEALTH OF PENNSY
24 NOTARIAL SEAL
SAMANTHA BRUER, Notary
Wilkes-Barre, Luzerne Coun
My Commission Expires April
25

Samantha Bruer
Court Reporter

Samantha Bruer

Exhibit J

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

* * * * *

B.L., a minor, *
by and through her *
father, LAWRENCE *
LEVY and her *
mother BETTY LOU *
LEVY, *

Plaintiffs * Case No.

vs. * 3:17-CV-1734

MAHANoy AREA *
SCHOOL DISTRICT, *
Defendant *

* * * * *

DEPOSITION OF

B.L.

November 21, 2018

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prohibited without authorization by
the certifying agency.

1 DEPOSITION
2 OF
3 B.L., taken on behalf of the Defendant
4 herein, pursuant to the Rules of Civil
5 Procedure, taken before me, the
6 undersigned, Samantha Bruer, a Court
7 Reporter and Notary Public in and for
8 the Commonwealth of Pennsylvania, at
9 the offices of the Mahanoy Area School
10 District, 1 Golden Bear Drive, Mahanoy
11 City, Pennsylvania, on Wednesday,
12 November 21, 2018, beginning at
13 9:02 a.m.

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25

A P P E A R A N C E S

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I N D E X

WITNESS: B.L.

EXAMINATION

By Attorney Levin

7 - 42

EXAMINATION

By Attorney Helfer

43

CERTIFICATE

44

EXHIBIT PAGE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
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Defendant's:

Exhibit 14	2018 Student Handbook,	
	Pages 61-62	9

OBJECTION PAGEATTORNEYPAGE

Hel fer	10,	10,	11,	12,	13,	13,	14
	15,	16,	17,	18,	19,	20,	20
	21,	21,	22,	22,	26,	27,	28
	29,	30,	30,	31,	31,	32,	32
	32,	33,	33,	34,	35,	35,	36
			37,	38,	39,	40,	40

S T I P U L A T I O N

(It is hereby stipulated and agreed by
and between counsel for the respective
parties that reading, signing,
sealing, certification and filing are
waived.)

P R O C E E D I N G S

B.L.,
CALLED AS A WITNESS IN THE FOLLOWING
PROCEEDING, AND HAVING FIRST BEEN DULY
SWORN, TESTIFIED AND SAID AS FOLLOWS:

EXAMINATION

BY ATTORNEY LEVIN:

Q. Good morning, B. Thank you for
coming again this morning. Sorry to
inconvenience you. I gave you
instructions at the beginning the last
time I took your deposition several
weeks ago. Would you like me to
repeat those instructions or do you

1 think you remember?

2 A. I think I remember.

3 Q. Okay.

4 Good. In front of you is the
5 same exhibit book that we handed you
6 last time. I want to open it up to
7 behind tab four.

8 Okay?

9 Do you recognize that as one of
10 the pages from the student handbook?

11 A. Yes.

12 Q. Okay.

13 That's Exhibit D-4.

14 Right?

15 A. Yes.

16 Q. That's what it's been marked.
17 Did you read the paragraph dealing
18 with personal conduct when you got the
19 book or at any time after you got the
20 handbook?

21 A. No.

22 Q. I'm going to show you what I
23 have marked as D-14, which I'll
24 represent to you is this year's
25 version of the handbook.

1 ---

2 (Whereupon, Defendant's
3 Exhibit 14, 2018
4 Student Handbook, pages
5 61-62, was marked for
6 identification.)

7 ---

8 BY ATTORNEY LEVIN:

9 Q. And do you see on the top of
10 the --- let me repeat my description.

11 This is two pages from this
12 year's handbook. It's not the whole
13 handbook, and the two pages that are
14 copies are pages 61 and 62 of the
15 handbook. Did you get the handbook
16 again this school year?

17 A. Yes.

18 Q. And do you see that there in
19 paragraph 8 is a paragraph dealing
20 with personal conduct?

21 A. Yes.

22 Q. Okay.

23 And you understood when you got
24 the handbook that students were
25 required to comply with the rules

1 contained in the handbooks.

2 Right?

3 A. Yes.

4 Q. Okay.

5 Did you ever object to the
6 rules contained in the handbook other
7 than filing this litigation?

8 ATTORNEY HELPER:

9 I'll object to form, but
10 you can answer.

11 THE WITNESS:

12 No.

13 BY ATTORNEY LEVIN:

14 Q. Okay.

15 Did you ever ask anybody for
16 any clarification as to what the rules
17 meant?

18 ATTORNEY HELPER:

19 I'm going to object to
20 form again. You can answer.

21 THE WITNESS:

22 No.

23 BY ATTORNEY LEVIN:

24 Q. Did you ever speak out against
25 any of the rules in the handbook,

1 either last year or this year?

2 ATTORNEY HELPER:

3 I'm going to object to
4 form again. You can answer.

5 THE WITNESS:

6 No.

7 BY ATTORNEY LEVIN:

8 Q. Please take a look at Exhibit
9 D-3 that's behind tab three. Can we
10 agree that these are the cheerleading
11 rules that were given to the
12 cheerleaders last school year?

13 A. Yes.

14 Q. And were similar rules given to
15 the cheerleaders this year?

16 A. I don't remember.

17 Q. Okay.

18 And did you object to anybody
19 when you got these rules about
20 anything in the rules?

21 A. No.

22 Q. Did you indicate to anybody
23 that you didn't understand what the
24 rules said?

25 A. No.

1 Q. Did you file any complaints
2 with anybody in the school district
3 about the rules?

4 A. No.

5 ATTORNEY HELPER:

6 I'm going to object to
7 form, but you can answer.

8 BY ATTORNEY LEVIN:

9 Q. Please take a look at Exhibit
10 D-18 --- or excuse me, D-12, I'm
11 sorry.

12 A. Okay.

13 Q. Okay.

14 Do you recognize that as a
15 permission form that you and your
16 parents signed at the beginning of
17 this school year?

18 A. Yes.

19 Q. Okay.

20 And you remember that your
21 parents initialed it where we have the
22 redactions?

23 A. Yes.

24 Q. Okay.

25 Did you question anybody about

13

1 the meaning of anything that's stated
2 on this permission form?

3 A. No.

4 Q. Can we agree that cheerleading
5 is a team activity?

6 ATTORNEY HELPER:

7 I'm going to object as
8 asked and answered.

9 THE WITNESS:

10 Yes.

11 BY ATTORNEY LEVIN:

12 Q. And can we agree that your
13 decision to participate on
14 cheerleading is totally voluntary on
15 your part?

16 A. Yes.

17 ATTORNEY HELPER:

18 I'll object to form, you
19 can answer.

20 BY ATTORNEY LEVIN:

21 Q. There are no requirements for
22 you to participate in any
23 extracurricular activities in order to
24 graduate, are there?

25 ATTORNEY HELPER:

14

1 Object to form, you can
2 answer.

3 THE WITNESS:

4 No.

5 BY ATTORNEY LEVIN:

6 Q. And no one forced you or made
7 you join cheerleading.

8 Is that correct?

9 A. Yes.

10 Q. Where were you when you signed
11 the permission form?

12 A. I'm not sure, probably at my
13 house.

14 Q. And was anybody from the school
15 district with you when you signed the
16 permission form?

17 A. No.

18 Q. Were your parents with you when
19 you signed the permission form?

20 A. I'd assume.

21 Q. Did anybody at the school
22 district force you to sign the
23 permission form?

24 A. No.

25 Q. Can we agree that the school

1 district's decision to fund
2 cheerleading is totally voluntary by
3 the school district?

4 ATTORNEY HELFER:

5 I'm going to object to
6 form. I have no idea how she
7 could know that.

8 ATTORNEY LEVIN:

9 Do you know or ---?

10 THE WITNESS:

11 I don't know, no.

12 BY ATTORNEY LEVIN:

13 Q. Are you aware of any
14 requirement that requires the school
15 district to fund cheerleading if it
16 decides that it doesn't want to
17 provide a cheerleading opportunity?

18 A. I don't know.

19 Q. Please take a look at Exhibit
20 D-3 --- excuse me, we already went
21 over that. And these rules contain
22 attendance rules.

23 Right? D-3, are you looking at
24 D ---?

25 A. Yes.

1 Q. Okay.

2 Is there anything about the
3 attendance rules that you don't
4 understand?

5 ATTORNEY HELPER:

6 If you need to take some
7 time to read them, go ahead.

8 THE WITNESS:

9 I understand them.

10 BY ATTORNEY LEVIN:

11 Q. Do you think the attendance
12 rules are reasonable and appropriate?

13 ATTORNEY HELPER:

14 I'm going to object to
15 the form. You're asking for a
16 legal conclusion from a ---
17 from a student.

18 ATTORNEY LEVIN:

19 Well, I'm not asking for
20 anything involving legality,
21 I'm asking a normal, regular
22 interpretation of the words
23 reasonable and appropriate. Do
24 you think the attendance rules
25 are reasonable and appropriate?

1 ATTORNEY HELPER:

2 I'm going to object to
3 the form again. You're asking
4 for an opinion from a lay
5 witness.

6 ATTORNEY LEVIN:

7 Do you think they're
8 reasonable and appropriate?

9 ATTORNEY HELPER:

10 Object to form.

11 THE WITNESS:

12 Yes.

13 BY ATTORNEY LEVIN:

14 Q. Okay.

15 Is there anything you don't
16 understand about the attendance rules?

17 A. No.

18 Q. Do you know if cheerleading
19 falls under the PIAA rules?

20 A. I don't know.

21 Q. Did you see the academic rules?
22 Do you think that they're reasonable
23 and appropriate?

24 ATTORNEY HELPER:

25 Object to the form. It

1 calls for a legal opinion.

2 THE WITNESS:

3 Yes.

4 BY ATTORNEY LEVIN:

5 Q. Do you think the rules about
6 uniforms are reasonable and
7 appropriate?

8 ATTORNEY HELPER:

9 I'd make the same
10 objection to form, calling for
11 a legal opinion.

12 THE WITNESS:

13 Yes.

14 BY ATTORNEY LEVIN:

15 Q. Do you think the rules about
16 sportsmanship, responsibility and
17 fundraising are reasonable and
18 appropriate?

19 ATTORNEY HELPER:

20 Object to form, calling
21 for a legal opinion.

22 THE WITNESS:

23 I guess, yeah.

24 BY ATTORNEY LEVIN:

25 Q. Do you think the rules about

1 technology are reasonable and
2 appropriate?

3 ATTORNEY HELPER:

4 Same objection.

5 THE WITNESS:

6 I guess.

7 BY ATTORNEY LEVIN:

8 Q. On the second page of the rules
9 under the sportsmanship section, the
10 rule states, quote, please have
11 respect for your school, coaches,
12 teachers, other cheerleaders and
13 teams. Remember, you are representing
14 your school when at games, fundraisers
15 and other events. Good sportsmanship
16 will be enforced. This includes foul
17 language and any inappropriate
18 gestures.

19 Did I read that correctly?

20 A. Yes.

21 Q. Do you agree that it's a
22 reasonable and appropriate rule for
23 cheerleaders to have respect for
24 school, coaches, teachers and other
25 cheerleaders and teams?

1 ATTORNEY HELPER:

2 I'm going to make the
3 same objection, you can answer.

4 THE WITNESS:

5 I guess.

6 BY ATTORNEY LEVIN:

7 Q. And you know what that means.
8 Right? You're not confused
9 about what that means, are you?

10 ATTORNEY HELPER:

11 I'm going to object to
12 form. What what means?

13 ATTORNEY LEVIN:

14 The rules that I just
15 read.

16 THE WITNESS:

17 I understand them.

18 ATTORNEY HELPER:

19 Same objection.

20 ATTORNEY LEVIN:

21 Okay.

22 Got it? Did you get ---

23 COURT REPORTER:

24 Yes.

25 ATTORNEY LEVIN:

1 --- she said she
2 understands them?

3 BY ATTORNEY LEVIN:

4 Q. Okay.

5 And do you agree that it is a
6 proper and laudable goal for public
7 schools to teach students to have
8 respect for others?

9 ATTORNEY HELPER:

10 Object to form.

11 THE WITNESS:

12 Yes.

13 BY ATTORNEY LEVIN:

14 Q. Do you agree that it's a proper
15 and laudable goal for school districts
16 to hold students accountable for not
17 following applicable rules?

18 ATTORNEY HELPER:

19 I'm going to object to
20 form. Are you talking about
21 valid rules or invalid rules?

22 ATTORNEY LEVIN:

23 You're allowed to answer
24 the question.

25 THE WITNESS:

1 Yes.

2 BY ATTORNEY LEVIN:

3 Q. Do you agree the cheerleaders
4 are representing their teams like the
5 rule states?

6 ATTORNEY HELPER:

7 Object to the form.

8 THE WITNESS:

9 Yes.

10 BY ATTORNEY LEVIN:

11 Q. Please take a look at Exhibit
12 D-11. Can we agree that that's the
13 complaint that you filed in this case?

14 A. Yes.

15 Q. Please take a look at paragraph
16 26 of the complaint. And if I asked
17 you this at the last time, I'm sorry.
18 It says on Saturday, May 28th, you
19 posted this snap. May 28th is a
20 Sunday.

21 Do you remember now whether you
22 posted it on Saturday or Sunday?

23 ATTORNEY HELPER:

24 I will object as asked
25 and answered.

1 THE WITNESS:

2 I don't remember.

3 BY ATTORNEY LEVIN:

4 Q. And did you go and double-check
5 after we had the last deposition as to
6 whether it was a Saturday or Sunday?

7 A. No.

8 Q. On page six --- excuse me,
9 paragraph 63 of the complaint, when
10 you get there, read it to yourself and
11 then I'll ask you a question when
12 you're finished.

13 A. I'm done.

14 Q. Okay.

15 You --- do you know where they
16 got that information that students who
17 participate in extracurricular
18 activities are less likely to abuse
19 alcohol or drugs?

20 A. I don't know.

21 Q. Please take a look at 61, where
22 it is alleged that being removed from
23 the squad impairs B.L. --- that's you,
24 right ---

25 A. Yes.

1 Q. --- opportunities to gain
2 admission to top colleges. What's the
3 basis for that allegation?

4 Do you know?

5 A. I don't know.

6 Q. You're a senior --- I mean,
7 you're in 11th grade.

8 Right?

9 A. Yes.

10 Q. Okay.

11 So you haven't started applying
12 for college yet.

13 Is that correct?

14 A. Yes.

15 Q. Have you taken the SATs yet?

16 A. No.

17 Q. Where do you currently think
18 you'd like to go to college?

19 A. Bloomsburg.

20 Q. And do you know anything about
21 Bloomsburg's cheerleading
22 opportunities?

23 A. No.

24 Q. Have you looked at Bloomsburg's
25 cheerleading opportunities to even

1 know if they have a cheerleading
2 squad?

3 A. No.

4 Q. Do you know anything about how
5 Bloomsburg views cheerleading in terms
6 of its enrollment and acceptance
7 process?

8 A. I don't know.

9 Q. Have you researched any
10 colleges or universities to determine
11 what role, if any, your activity of
12 cheerleading has with getting into
13 those schools and colleges?

14 A. No.

15 Q. Has anybody told you from any
16 college or university that you would
17 qualify for any scholarships by virtue
18 of your activities on cheerleading?

19 A. No.

20 Q. Paragraph 62 alleges that,
21 quote, sustained participation in
22 extracurricular activities also has
23 significant benefits for student
24 wellbeing, end of quote.

25 Did I read that correctly?

1 A. Yes.

2 Q. Can you tell me what benefit
3 your participation in cheerleading has
4 had on your well-being?

5 ATTORNEY HELPER:

6 I'm going to object to
7 form.

8 THE WITNESS:

9 I don't know.

10 BY ATTORNEY LEVIN:

11 Q. Okay.

12 Please turn to page 12 of the
13 transcript, and you'll notice that
14 there are page numbers at the bottom
15 of each page. I added those page
16 numbers for ease of reference.

17 Are you on page 12?

18 A. Yes.

19 ATTORNEY HELPER:

20 And just for
21 clarification of the record,
22 you referred to transcript. I
23 think you were still referring
24 to the complaint?

25 ATTORNEY LEVIN:

27

1 Oh, if I misspoke, thank
2 you for pointing that out. I
3 am still referring to the
4 complaint.

5 BY ATTORNEY LEVIN:

6 Q. In paragraph E on that page,
7 you're asking the Court to, quote,
8 award plaintiff damages in an amount
9 determined at trial, end of quote.

10 Did I read that correctly?

11 A. Yes.

12 Q. Do you know what damages you
13 are seeking?

14 A. No.

15 Q. Do you agree that participation
16 in extracurricular activities is a
17 privilege and not a right?

18 ATTORNEY HELPER:

19 I'm going to object to
20 the form.

21 THE WITNESS:

22 I guess.

23 BY ATTORNEY LEVIN:

24 Q. That's consistent with your
25 understanding?

1 A. Yes.

2 Q. And do you agree that students
3 can be excluded from extracurricular
4 activities simply because they're not
5 good enough to participate?

6 ATTORNEY HELPER:

7 I'll object to form.

8 THE WITNESS:

9 I don't know.

10 BY ATTORNEY LEVIN:

11 Q. Well, you would agree that with
12 cheerleading, if you don't meet the
13 standards for the tryouts, you don't
14 get to participate.

15 Right?

16 A. Yes.

17 Q. And you're aware that similar
18 rules apply with respect to other
19 teams.

20 Right?

21 A. Yes.

22 Q. I think you said that you were
23 on another team.

24 Right?

25 A. Cross country.

1 Q. Cross country. And do you have
2 to try out for that and meet certain
3 standards?

4 A. No.

5 Q. Okay.

6 So everybody gets to be on
7 cross country regardless of their
8 capabilities?

9 A. Yes.

10 Q. Okay.

11 Do you know which sports in the
12 school district require tryouts and a
13 certain minimum level of proficiency
14 in order to get on the team and which
15 ones don't?

16 ATTORNEY HELPER:

17 I'm going to object to
18 form.

19 THE WITNESS:

20 I'm not sure.

21 BY ATTORNEY LEVIN:

22 Q. Do you agree that there are
23 certain extracurricular activities in
24 the school district where students can
25 be excluded if their grades are not

1 good enough?

2 A. Yes.

3 Q. Do you think it's fair to keep
4 someone off of an extracurricular
5 activity if they're struggling in
6 school with their grades?

7 ATTORNEY HELPER:

8 I'd object to the form.

9 It's calling for an opinion.

10 You can answer.

11 THE WITNESS:

12 Yes.

13 BY ATTORNEY LEVIN:

14 Q. Do you think a school district
15 should have any right as to how it
16 allows students which --- to wear
17 uniforms that the school buys and pays
18 for?

19 ATTORNEY HELPER:

20 Object to the form.

21 THE WITNESS:

22 Yes.

23 BY ATTORNEY LEVIN:

24 Q. Do you think that teaching
25 students that there are consequences

1 for crude and profane communications
2 on social media is a proper role for
3 school districts?

4 ATTORNEY HELPER:

5 I'm going to object to
6 the form.

7 THE WITNESS:

8 I guess.

9 BY ATTORNEY LEVIN:

10 Q. Which takes more time, the
11 cheerleading or the cross country, do
12 you know? What's your best estimate?

13 A. I'm not ---.

14 ATTORNEY HELPER:

15 I'm going to object.
16 Are you asking in terms of her
17 time or ---?

18 ATTORNEY LEVIN:

19 Oh, yeah, in terms
20 of ---.

21 THE WITNESS:

22 Cheer probably was.

23 BY ATTORNEY LEVIN:

24 Q. Okay.

25 Is it close, do you think?

1 A. I'm not sure.

2 Q. Does the cheerleading squad
3 ever perform outside of the Mahanoy
4 School District, in other words, at
5 away games?

6 ATTORNEY HELPER:

7 I'm going to object as
8 asked and answered.

9 THE WITNESS:

10 Yes.

11 BY ATTORNEY LEVIN:

12 Q. And how does the squad get to
13 away games?

14 ATTORNEY HELPER:

15 Same objection.

16 THE WITNESS:

17 Take a bus.

18 BY ATTORNEY LEVIN:

19 Q. Is it on the same bus as the
20 football team, for example, or is it a
21 different bus?

22 A. No.

23 ATTORNEY HELPER:

24 Same objection.

25 THE WITNESS:

1 It's a different bus.

2 BY ATTORNEY LEVIN:

3 Q. Are there any other students on
4 the bus other than the cheerleaders?

5 ATTORNEY HELPER:

6 Same objection.

7 THE WITNESS:

8 Yes.

9 BY ATTORNEY LEVIN:

10 Q. And who else is on the bus
11 other than the cheerleaders?

12 ATTORNEY HELPER:

13 Same objection.

14 THE WITNESS:

15 The band front.

16 BY ATTORNEY LEVIN:

17 Q. Do you know anything about an
18 organization called the National
19 Scouting Report, NSR for short?

20 A. I don't know.

21 Q. Have you or your parents been
22 contacted by NSR about your
23 cheerleading?

24 ATTORNEY HELPER:

25 I'm going to object. I

34

1 think she already answered that
2 she doesn't know what the
3 organization is.

4 THE WITNESS:

5 I don't know.

6 BY ATTORNEY LEVIN:

7 Q. Do you know anything about an
8 organization called the College
9 Cheerleading Recording (sic) Group ---
10 Recruiting Group?

11 A. No.

12 Q. Have you ever been contacted by
13 any group called the cheerleading ---
14 College Cheerleading Recording (sic)
15 Group?

16 ATTORNEY HELPER:

17 Same objection.

18 THE WITNESS:

19 No.

20 BY ATTORNEY LEVIN:

21 Q. Do you know what skillset
22 colleges and universities look for in
23 order to select a student for their
24 cheerleading squad?

25 A. I don't know.

1 Q. Do you have any evidence if
2 colleges or universities would know
3 that you were removed from the junior
4 varsity cheerleading squad last year?

5 A. I'm not sure.

6 Q. Does that mean you know of no
7 evidence that they get that
8 information?

9 ATTORNEY HELPER:

10 I'm going to object to
11 form.

12 THE WITNESS:

13 I --- I guess they can.
14 I don't know.

15 BY ATTORNEY LEVIN:

16 Q. You don't know? Do you know
17 what weight, if any, colleges and
18 universities give to participation in
19 junior varsity cheerleading in tenth
20 grade?

21 A. I don't --- I don't know.

22 Q. Okay.

23 You obviously know who Ms.
24 Luchetta is.

25 Right?

1 A. Yes.

2 Q. And you were in attendance at
3 the preliminary injunction hearing in
4 this case on October 2, 2017.

5 Is that correct?

6 A. Yes.

7 Q. You heard Ms. Luchetta testify
8 at that hearing.

9 Is that correct?

10 A. Yes.

11 Q. Ms. Luchetta testified that the
12 main purpose of the rules is not only
13 to teach students that they have to
14 follow the rules, and if they don't
15 follow the rules, there's
16 consequences. But in addition, that
17 the school wants to teach them team
18 building skills.

19 Do you remember her testimony
20 about that?

21 ATTORNEY HELPER:

22 Object to form.

23 THE WITNESS:

24 I don't remember.

25 BY ATTORNEY LEVIN:

1 Q. Do you have any evidence to the
2 contrary, to contradict her testimony
3 as I've just summarized it for you?

4 A. I guess not.

5 Q. Please take a look at Exhibit
6 D-13. Can we agree that that's a
7 permission form that your parents and
8 your sister signed this year?

9 A. I don't --- my sister?

10 Q. You have a sister or a brother.
11 I forget what you told me.

12 A. I have a brother.

13 Q. Okay.

14 Didn't your brother sign this
15 form?

16 A. I guess.

17 ATTORNEY HELPER:

18 Object to form.

19 BY ATTORNEY LEVIN:

20 Q. This indicates that the
21 homeroom teacher is Gettig.

22 Do you see that?

23 A. Yes.

24 Q. Is that your understanding
25 that's your brother's homeroom

1 teacher?

2 A. I guess. I don't know what his
3 homeroom is.

4 Q. Do you have any notes or
5 records about anything that occurred
6 with cheerleading last year?

7 A. I don't know.

8 Q. Well, did you prepare any
9 notes? Did you keep any journals? Do
10 you have ---

11 A. No.

12 Q. --- a calendar where you put
13 notes down about anything that
14 happened at cheerleading last year?

15 ATTORNEY HELPER:

16 I'm going to object to
17 form. You can answer.

18 THE WITNESS:

19 No.

20 BY ATTORNEY LEVIN:

21 Q. Do you have any notes, records
22 of things that happened at
23 cheerleading this year?

24 A. No.

25 ATTORNEY HELPER:

1 Can we take a quick
2 break? Do you want a tissue?

3 ---

4 (WHEREUPON, AN OFF RECORD DISCUSSION
5 WAS HELD.)

6 ---

7 BY ATTORNEY LEVIN:

8 Q. Please take a look at Exhibit
9 D-7. That's an application that you
10 signed back in 2017.

11 Is that correct?

12 A. Yes.

13 Q. Did you read the application
14 before you signed it?

15 A. I don't remember.

16 Q. On that form, towards the
17 bottom, it asks you to list your
18 extracurricular activities. The first
19 one says Interact Club.

20 What is that?

21 ATTORNEY HELPER:

22 Object as asked and
23 answered, but you can answer.

24 THE WITNESS;

25 Interact Club is like

1 Meals on Wheels. Like we
2 deliver meals to the elderly.

3 BY ATTORNEY LEVIN:

4 Q. Okay.

5 Did you object to anything that
6 was stated on this application at any
7 time?

8 ATTORNEY HELPER:

9 Objection to form.

10 THE WITNESS:

11 I don't remember.

12 BY ATTORNEY LEVIN:

13 Q. Did you file any complaints
14 with anybody about what was stated on
15 this form?

16 ATTOENY HELPER:

17 Object to form, you can
18 answer.

19 THE WITNESS:

20 I don't think so.

21 BY ATTORNEY LEVIN:

22 Q. What do you want from this
23 lawsuit?

24 A. I don't know.

25 ATTORNEY LEVIN:

1 Were you able to hear
2 that?

3 COURT REPORTER:

4 She said I don't know.
5 Correct?

6 ATTORNEY LEVIN:

7 Yes. Try to keep your
8 voice up.

9 BY ATTORNEY LEVIN:

10 Q. When you returned to
11 cheerleading after the Judge granted
12 the preliminary injunction in this
13 case --- the same two coaches as
14 before.

15 Is that correct?

16 A. Yes.

17 Q. How did the coaches treat you
18 when you returned to the cheerleading
19 squad?

20 A. Fine, I guess.

21 Q. Can we agree that both of the
22 coaches are also teachers in the
23 district?

24 A. Yes.

25 Q. Did you have either of the

1 coaches as a teacher?

2 A. Mrs. Luchetta.

3 Q. And what subject did she teach
4 you?

5 A. Geometry.

6 Q. And did you have her last
7 school year, the 2017-18 school year,
8 or do you have her this school year
9 the '17 --- '18-'19 school year?

10 Excuse me.

11 A. Last school year.

12 Q. Okay.

13 And how did she treat you as a
14 teacher last school year?

15 A. Fine.

16 ATTORNEY LEVIN:

17 I have nothing further.

18 ATTORNEY HELPER:

19 Okay.

20 ATTORNEY LEVIN:

21 That's your reward for
22 being short, succinct and
23 responsive. I assume you have
24 no questions?

25 ATTORNEY HELPER:

1 I only have one
2 question.

3 ---

4 EXAMINATION

5 ---

6 BY ATTORNEY HELPER:

7 Q. To use opposing Counsel's
8 terminology of reasonable and
9 appropriate, do you believe it's
10 reasonable and appropriate for a
11 school district to force students to
12 comply with rules that violate the
13 student's constitutional rights?

14 A. No.

15 ATTORNEY HELPER:

16 Okay. That's all.

17 Okay. Thank you.

18 ATTORNEY LEVIN:

19 Thank you.

20 * * * * *

21 DEPOSITION CONCLUDED AT 9:30 A.M.

22 * * * * *

23

24

25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF LUZERNE)

3 CERTIFICATE

4 I, Samantha Bruer, a Notary Public in
5 and for the Commonwealth of Pennsylvania, do
6 hereby certify:

7 That the witness, B.L., whose
8 testimony appears in the foregoing deposition,
9 was duly sworn by me on 11-21-18 and that the
10 transcribed deposition of said witness is a
11 true record of the testimony given by said
12 witness;

13 That the proceeding is herein recorded
14 fully and accurately;

15 That I am neither attorney nor counsel
16 for, nor related to any of the parties to the
17 action in which these depositions were taken,
18 and further that I am not a relative of any
19 attorney or counsel employed by the parties
20 hereto, or financially interested in this
21 action.

22 Dated the 7th day of December, 2018

23 COMMONWEALTH OF PENNSYLVANIA
24 NOTARIAL SEAL
SAMANTHA BRUER, Notary Public
Wilkes-Barre, Luzerne County, PA
My Commission Expires April 15, 2019
25

Samantha Bruer

Court Reporter

Samantha Bruer

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INITIAL PAGE

Actual Name

Initials Used

Brandy Levy

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